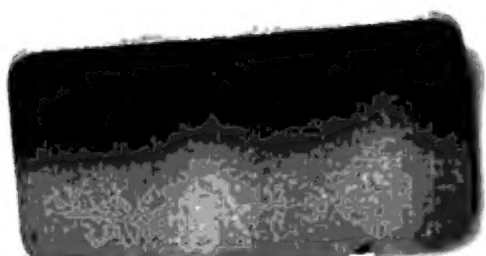


**SUGGESTIONS
FOR THE
REPRESSION OF
CRIME,
CONTAINED IN...**

Matthew Davenport Hill





SUGGESTIONS
FOR THE
REPRESSION OF CRIME,

CONTAINED IN
CHARGES DELIVERED TO GRAND JURIES
OF
BIRMINGHAM;

SUPPORTED BY
ADDITIONAL FACTS AND ARGUMENTS.

TOGETHER WITH ARTICLES FROM REVIEWS AND NEWSPAPERS
CONTROVERTING OR ADVOCATING THE CONCLUSIONS
OF THE AUTHOR.

BY
MATTHEW DAVENPORT HILL.

"Ictibus crebris."
Hor.

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Ignace Salvagny.
With the Author's kind regards.

I INSCRIBE THIS BOOK
TO
HENRY LORD BROUGHAM AND VAUX;
WHOSE GENIUS AND ENERGY,
DIRECTED TO THE NOBLEST OBJECTS,
WON THE ADMIRATION OF MY YOUTH;
WHOSE FRIENDSHIP HAS BEEN THE PRIDE OF MY MANHOOD,
AND NOW SOLACES
MY DECLINING YEARS.

PREFACE.

JUDGING, perhaps, too hastily, from the public attention directed towards many of these Charges on their delivery, my friends have decided that they ought to be published, in a form likely to obtain a place for them among works consulted by the student of the various interesting branches of knowledge, which—using the term in a wide sense—may be classed under the head of Criminal Jurisprudence.

As the limits of a Charge necessarily exclude very much that a reader engaged in the investigation of the subject might desire to have before him; and as uninterrupted argument becomes wearisome, I have separated the Charges from each other by matter which, I trust, will furnish a variety both useful and acceptable.

The views which I have from time to time submitted to my countrymen, though rarely original, have nevertheless had the fortune to provoke controversies in the Press, of a nature to show that the questions thereby raised had then for the first time earnestly occupied the public mind. Consequently, they were sifted with greater zeal, and by a greater number of writers, than had ever before been employed upon them. And, in order that the reader may not lose the benefit to be derived from considering the subject under a multiplicity of aspects, I have presented to him, in rapid succession, the conflicting opinions set forth in the journals and other periodical works, which have done me the honour to notice my labours—whether for approval or for censure.

The volume, thus composed, will, to no inconsiderable extent, show the progress of opinion during eighteen years, in relation to the various topics on which it treats. It will therefore, I trust, not be without its use, in offering encouragement to those who feel it their duty to abide steadfastly by sound principles, however unpopular,—patiently awaiting the day when public opinion shall range itself on their side.

STAPLETON, BRISTOL, *May*, 1857.

TABLE OF CONTENTS.

	PAGE
INTRODUCTION TO CHARGE OF JULY, 1839	1
First Sessions	1
Dangerous Meetings	1
Police Defeated	2
Sessions Court guarded by Military Force	2
CHARGE OF JULY, 1839	2
Painful Circumstances of First Charge	2
Justice best Administered on the Spot	5
Necessity for Permanently Disposing of Convicts who make Crime their Calling	7
Use and Abuse of Grand Juries	10
SEQUEL TO CHARGE OF JULY, 1839	11
Riots, with Incendiary Fires	11
Distinction between Political Prisoners and ordinary Cri- minals should not be obliterated	13
Effect on Prisoners of Degrading Observances	15
Public ought to bear Cost of Witnesses for Prisoners	19
History of Prisoners' Counsel Bill	25
Convictions and Executions for Forgery	42
OBSERVATIONS ARISING OUT OF CHARGE DELIVERED IN MAY, 1840	46
Uttering Counterfeit Coin	46
Circumstances incidental to this Offence changed since 1840	46
Criminal Class below the average in Intellect	48
Phrenological Treatment of Prisoners	48
CHARGE OF APRIL, 1841	52
Reformatory at Stretton-on-Dunsmore	52
Its Results	53
Letter thereon from Sir J. E. Eardley Wilmot, Bart.	55
Necessity for multiplying Reformatory Schools	63

	PAGE
<u>CHARGE OF JANUARY, 1845</u>	<u>64</u>
<u>Strikes and Intimidation</u>	<u>65</u>
<u>Receivers of Stolen Goods</u>	<u>66</u>
<u>Marine Store Dealers.</u>	<u>69</u>
<u>SEQUEL TO CHARGE OF JANUARY, 1848</u>	<u>69</u>
<u>Local Act in Liverpool for regulating the Licenses of</u> <u>Marine Store Dealers</u>	<u>69</u>
<u>CHARGE OF OCTOBER, 1845</u>	<u>71</u>
<u>Embezzlement</u>	<u>71</u>
<u>Masters and Servants</u>	<u>73</u>
<u>Prevention of Crime</u>	<u>74</u>
<u>SEQUEL TO CHARGE OF OCTOBER, 1845</u>	<u>75</u>
<u>Preventive Checks to Crime</u>	<u>75</u>
<u>Charity</u>	<u>76</u>
<u>Duties of Employers towards Employed</u>	<u>77</u>
<u>Belmont Candle Company</u>	<u>78</u>
<u>Recreation</u>	<u>81</u>
<u>THE LAYING OF THE FIRST STONE OF BIRMINGHAM GAOL</u>	<u>101</u>
<u>Recorder's Speech</u>	<u>102</u>
<u>The Gaol should be a Moral Hospital</u>	<u>103</u>
<u>CHARGE OF MARCH, 1847</u>	<u>107</u>
<u>Sudden Increase in Crime</u>	<u>107</u>
<u>Evils of Short Imprisonments</u>	<u>108</u>
<u>SEQUEL TO THE CHARGE OF MARCH, 1847</u>	<u>109</u>
<u>Causes affecting <i>quantum</i> of Crime</u>	<u>109</u>
<u>CHARGE OF APRIL, 1848</u>	<u>112</u>
<u>Chartist Demonstration</u>	<u>112</u>
<u><i>Liberté, Égalité, Fraternité</i></u>	<u>113</u>
<u>CHARGE OF OCTOBER, 1848</u>	<u>117</u>
<u>Juvenile Offenders</u>	<u>117</u>
<u>Stretton-on-Dunsmore</u>	<u>119</u>
<u>Mettray</u>	<u>119</u>
<u>SEQUEL TO CHARGE OF OCTOBER, 1848</u>	<u>130</u>
<u>Mettray</u>	<u>130</u>
<u>Letter from M. Blanchard on Results of Mettray</u>	<u>130</u>
<u>Extract from <i>Le Journal d'Indre et Loire</i></u>	<u>134</u>

	PAGE
<u>CHARGE OF APRIL, 1850</u>	<u>135</u>
<u>Petitions on behalf of Prisoners</u>	<u>135</u>
Facility with which Signatures are obtained	136
<u>Evil Effects thereof</u>	<u>140</u>
<u>SEQUEL TO CHARGE OF APRIL, 1850</u>	<u>141</u>
<u>Instances illustrating the Statements made in the Charge .</u>	<u>142</u>
<u>INTRODUCTION TO CHARGE OF OCTOBER, 1850</u>	<u>146</u>
Burglaries in Birmingham and elsewhere	146
<u>CHARGE OF OCTOBER, 1850</u>	<u>151</u>
<u>Crimes of Violence</u>	<u>151</u>
Suggestion for Restraining Persons known to be living by Crime	155
<u>SEQUEL TO CHARGE OF OCTOBER, 1850</u>	<u>157</u>
Law existing in India similar to that suggested in the Charge	158
Opinions of the Press on the Suggestion	159
<u>CHARGE OF OCTOBER, 1851</u>	<u>180</u>
Suggestion contained in preceding Charge more fully Explained	181
<u>SEQUEL TO CHARGE OF OCTOBER, 1851</u>	<u>191</u>
Burglary at Mr. Holford's	191
Opinions of the Press on the Author's Suggestion	194
<u>INTRODUCTION TO CHARGE OF OCTOBER, 1853</u>	<u>232</u>
Cruelties in Birmingham Gaol	232
<u>CHARGE OF OCTOBER, 1853</u>	<u>238</u>
Birmingham Gaol	238
Captain Maconochie	239
Prison Discipline	240
Reformatory Treatment	243
<u>SEQUEL TO CHARGE OF OCTOBER, 1853</u>	<u>262</u>
Mark System	262
Testimonial to Captain Maconochie	265
Norfolk Island	273
Inefficiency of Deterrents	274
Letter from the Author to Mr. Adderley thereon	276
<i>Société de Patronage</i>	287
Lord Brougham on the Criminal Class	294

	PAGE
CHARGE OF MARCH, 1854	299
Connexion between Disease and Crime	300
Metropolitan Association for Improving the Dwellings of the Industrious Classes	302
Common Lodging Houses Act	304
Its Effect in Birmingham and other Provincial Towns . .	305
„ London	306
SEQUEL TO CHARGE OF MARCH, 1854	311
Conversation with Dr. Southwood Smith	311
Report by Medical Officer of Birmingham	312
Sanitary Condition of that Town	317
Overcrowding in London	320
Bristol Lodging Houses	326
Duties and Responsibilities of Houseowners	327
CHARGE OF SEPTEMBER, 1854.	335
Youthful Offenders Act	336
Reformatory Schools	338
Parental Responsibility	339
Voluntary Principle	339
SEQUEL TO CHARGE OF SEPTEMBER, 1854	342
Birmingham Conferences	342
Bristol Meeting	346
Warwick Meeting	346
Returning Juvenile Offenders to Parents or Employers .	351
Industrial, Ragged, and Reformatory Schools	353
INTRODUCTION TO CHARGE OF JANUARY, 1855	367
Operation of the Maine Law	367
CHARGE OF JANUARY, 1855	372
Intemperance a Fruitful Source of Crime	372
Restriction in Sale of Intoxicating Drinks	374
Prohibition	376
Maine Law	382
Addendum	389
SEQUEL TO CHARGE OF JANUARY, 1855.	390
Objections to the Charge Answered	390
Table showing the Progress of the Maine Law in the United States	412
Effect of Good or Bad Times on Amount of Crime . . .	415
Effect of Prohibition in the United States	423

	PAGE
CHARGE OF APRIL, 1855	439
Grand Juries	440
Limited Utility of Grand Juries	451
SEQUEL TO CHARGE OF APRIL, 1855	455
Birmingham Debtors' Gaol	455
CHARGE OF OCTOBER, 1855	462
Ticket-of-leave System	462
Rapid Mitigation of the Criminal Code	463
Stoppage of Transportation	464
Necessity for Adopting Reformatory System	469
SEQUEL TO CHARGE OF OCTOBER, 1855	474
Archbishop Whately on Time Sentences	474
Hulks	475
Transportation Committee, House of Commons, 1856	476
Opinions of the Press on the Charge	478
CHARGE OF OCTOBER, 1856	529
Resolutions of the Transportation Committee, House of Commons, 1856	529
Hope, an essential element in Reformatory Treatment	531
Penal Servitude	533
Ticket-of-leave System not administered in its Integrity	536
SEQUEL TO CHARGE OF OCTOBER, 1856	543
Prisons of Munich and Valencia	544
Smithfield Penitentiary, at Dublin	586
Re-commitments of Ticket-of-leave Men	589
Photographic Portraits of Criminals	594
List of Ticket-of-leave Men in Birmingham	596
Discharged Prisoners' Aid Society at Birmingham	599
Letter to the <i>Times</i> in defence thereof	604
INTRODUCTION TO CHARGE OF DECEMBER, 1856	610
CHARGE OF DECEMBER, 1856	610
Crimes of Violence	611
Discharge from Gaol of Unreformed Criminals	615
Ticket-of-leave System, if faithfully administered, would mitigate present evils	619
SEQUEL TO CHARGE OF DECEMBER, 1856	622
Repression of Crime the end aimed at by Criminal Juris- prudence	622
Letter to the <i>Daily News</i> thereon	623
Opinions of the Press on the Charge	638

	PAGE
<u>CHARGE OF MARCH, 1857</u>	<u>651</u>
<u>Sir George Grey's Transportation Bill</u>	<u>651</u>
<u>Necessity for Reformatory Treatment</u>	<u>655</u>
<u>Tickets-of-leave</u>	<u>658</u>
<u>The Ashover Burglary</u>	<u>666</u>
<u>SEQUEL TO CHARGE OF MARCH, 1857</u>	<u>669</u>
<u>Crime in 1856</u>	<u>670</u>
<u>Prison Discipline in Ireland</u>	<u>672</u>
<u>Smithfield Penitentiary, Dublin</u>	<u>673</u>
<u>Thomas Wotton</u>	<u>683</u>
<u>Tickets-of-leave and Penal Servitude Men</u>	<u>687</u>

CHARGES,

ETC.

INTRODUCTION TO CHARGE OF JULY, 1839.

FOR some ten days prior to the holding of my first sessions, a large concourse of people assembled every evening in the open market-place, called the Bullring, under the influence of certain Chartist leaders. By their numbers they obstructed the thoroughfares, and became obnoxious to the shopkeepers of the district ; creating impediments which lessened the resort of customers, and thereby caused considerable pecuniary loss to these tradesmen, who naturally complained to the authorities of the injury which they were sustaining, from a course which appeared to be growing into a habit. It did not seem that the leaders had any immediate object in view, except to display the numbers of their adherents, and thus act on public opinion, and perhaps on the public fears. These gatherings did not take the form of an organized meeting, with a chairman at its head, and there being no common object to engage the attention of the multitude, nor presiding power to hold it in check, apprehensions not unreasonably arose, that tumults might suddenly break out pregnant with serious danger to the peace of the town.

At that time Birmingham had not the advantage of the new police ; and the old constabulary force was, from the paucity of its numbers, quite unable to cope with such assemblies. The authorities, however, although their warnings and exhortations to the populace to desist from these alarming exhibitions of physical force were of no avail, felt reluctant to call in military aid ; and considering that little or no actual violence had then been committed, recourse to such an extreme would not have been advisable.

Instead, therefore, of sending to the barracks for soldiers, they applied to the Secretary of State for the Home Department for a body of police from London, who quickly came down by railway. They arrived in the dusk of the evening before the day of sessions, and were immediately led to the market-place, under the conduct of the mayor; and, after the proper formalities had been gone through, were ordered to disperse the crowd. Finding themselves, however, in a strange place, and in the twilight, they became confused and alarmed; and the populace, taking advantage of its numbers, and observing, probably, the unfortunate state of its opponents, made such head against them as to defeat their attack. Many of the police were so rudely handled, that it became necessary to carry them to the hospital. The consequences, in all probability, would have been more serious had not the military been quickly summoned; these, by their mere presence, turned the fortune of the day, and scattered the rioters—the mob happily giving no occasion for the use of weapons.

But having regard to the exasperation produced by this conflict, it was thought prudent that a few dragoons should mount guard over the court—a precaution which, I am glad to say, it has never been necessary to repeat.

CHARGE OF JULY, 1839.

GENTLEMEN OF THE GRAND JURY,

It has fallen to my lot to address you, for the first time, under circumstances very painful, and by me quite unexpected. It has so happened that the eve of the day on which, by the gracious command of our Sovereign, we are called upon to bring that noblest institution of our country, trial by jury, into action, amidst the homes by which we are surrounded, should be the time chosen by evil-disposed men to meet in tumultuous assembly, in that same place with the intention, as was clearly evinced by their subsequent proceedings, to defy the law, and overpower its ministers by main force.

My disappointment you doubtless all share with me, because you know that Birmingham has been celebrated throughout the

whole kingdom for the good order with which its vast assemblages of the people have been conducted.

These peaceful meetings had been supposed to have put to rest all questions as to whether large numbers could be allowed to meet at their will and pleasure, without any other control than their own good sense and loyal feelings, which it has been thought would always lead every class of the community to consider the subversion of public order as a heavy calamity to honest men, and only to be desired by plunderers and incendiaries.

And so long as these congregations appeared to hold any lawful object in view, however wild or unreasonable—indeed, so long as their objects remained in doubt—so long did the magistracy of this borough do quite right not to interpose any obstacle to their fellow-townsmen assembling together; whether the grievances which they proposed to themselves to discuss were real or imaginary. But when it became clear to all eyes that the only intention and effect of those meetings, so frequently repeated, was to disturb and overawe the loyal inhabitants of the town, whose comfort was destroyed, and whose safety was endangered, the just limits of toleration were passed. The magistrates had to choose between forbearance to the disaffected and tumultuous on the one hand, and on the other that support which they were sworn to give to the peaceful and unoffending who claimed their protection. In such a state of things, forbearance, far from being a virtue, would have become a crime. The magistrates, therefore, have acted as became the upholders of the law in calling in the aid of an armed force to restore and preserve the peace of the borough; and notice and admonition having proved unavailing, they were bound to employ that force with promptitude and vigour.

On this topic I shall say no more, for the sufficient reason that some persons are in custody awaiting their trial upon charges founded on their alleged conduct on the occasions to which I have referred. It would ill become me, and would argue a strange forgetfulness of my duty, to utter a single word which could operate to deprive such persons of a fair trial; which, as it is the highest boast of Englishmen that all persons accused should enjoy, so it is peculiarly incumbent on me, filling the seat of justice, to be cautious that nothing falling from my lips should in the least degree impair. But I must be allowed,

in quitting the subject, to express my deep regret, and the bitter humiliation I feel, that the first introduction of trial by jury into the town of Birmingham should be made unhappily memorable by the circumstances under which I am now speaking; by the necessity in which I now find myself of sitting under the protection of the sword: but to this unhappy necessity we must all submit. To my feelings as a lawyer, and an admirer of our constitution, nothing can be more abhorrent than that the administration of justice should be carried on in the presence of a military array. In common with yourselves I am imbued to the full with jealousy of military interference. In the administration of justice, soldiers, under pretence of guarding the ministers of the law from outrage, have been employed in some periods of our history to overawe their proceedings; their attendance, therefore, is never permitted except when required by an overwhelming necessity, to which all rules must give way. Meanwhile our care must be to perform our duties, forgetting as much as possible the untoward circumstances under which we meet.

I can scarcely suppose that the gentlemen whom I am addressing, many of whom I have known from my earliest youth—that men, filling your eminent position in the borough, and feeling, as I know you all do, sincere and ardent interest in its welfare, can have witnessed the change which our Queen has wrought in granting her charter of incorporation, and in commanding me to hold my sessions in your town, without having your minds directed to the reasons for the course which has been taken, and to the benefits which may be expected to flow from this application of the great maxim of our jurisprudence, that, ‘Justice ought to be brought home to every man’s door.’

The consideration of these questions, as might be expected, has much occupied my own mind; and as principles are involved in them which will have a practical bearing on your duties and mine,—on your duties as persons of influence among your fellow-townsmen as well as in your present capacity,—I shall proceed to offer such remarks as it has occurred to me might be profitably submitted to your attention.

That crime will be repressed in proportion to the certainty of the detection and punishment of the criminal, is an obvious truth. And experience has at length taught us, that a certain

punishment, though slight, is far more effectual to deter from crime, than the terror of the heaviest penalty that man can inflict where the chances of escape are numerous.

Much has been done of late years to make a nearer approach to certainty of punishment. Formerly, the whole expense of prosecutions fell on the injured party, who, having suffered once from the inability of the public to protect *him*, was made to suffer again, and often with much greater severity, that he might protect the *public*.

It is easy to see that so heavy a tax on prosecutions must have operated as a bounty to crime. Defraying the expenses from a public fund has greatly diminished this evil; but it is quite evident that, unless prosecutors and witnesses were remunerated to an amount which might furnish a motive to fabricate charges against the innocent (to say nothing of the burthens which would be accumulated on the ratepayer), much loss and inconvenience must still fall on individuals taken from their occupations and detained at a place remote from their dwellings. Nor would money, however lavishly expended, be in all cases a compensation for this enforced absence.

To remove every motive to supineness in the injured party—to relieve him and his witnesses in the performance of a public duty from unnecessary sacrifice—it is indispensable that he should find the seat of justice at hand. And to the prisoner, if innocent, the benefit of being tried on the spot where the offence is alleged to have been committed must be equally clear.

It has often occurred to me to hear a poor and ignorant man, who has been carried to a distance from the scene of his imputed crime, and of necessity, therefore, separated from his friends, fixed as they were by poverty to the spot where they lived, asked if he had any witnesses on his behalf. His answer has painfully struck upon my ear;—he has said, ‘I have witnesses, but I have no money to bring them before you.’ In Belgium, the cost of the witnesses for the prisoner is paid by the public. It is not easy to find a satisfactory reason for our English practice; but we clearly diminish its evils when we bring the accused to trial on the spot where his witnesses may be expected to be found.

Gentlemen, although I have put the advantages to the innocent prisoner last in order, they stand first in my estimation.

That the administration of the *law* should be the administration of *justice*, is the most sacred of human duties. The fearful power assumed by erring man to inflict pain and disgrace on his brother, can only be justified when, feeling his awful responsibility, and conscious of the imperfection of his faculties, he spares nothing within the compass of his means to judge according to the truth. God forbid that to ensure the destruction of the guilty, we should put to peril the safety of the innocent.

And, Gentlemen, if we could bring ourselves to act on a principle so abhorrent to the maxims of English law, and so revolting to the feelings of Christian men, how short-sighted would be our policy ! how miserable the attempt to repress crime by crime !

For on what, after all, are we to depend for upholding the law ? In the present state of things, assuredly not on punishing all offences. To that certainty of punishment, of which I have spoken, we have as yet made but distant approaches, for causes to which I shall presently advert.

If, therefore, the people of this country were only deterred from crime by fear of legal punishment, there is little reason why offenders should not multiply a hundredfold. But they are withheld by better motives ; and among them I give a high place to that veneration for the law which results from the confidence of the country in its just administration. To this confidence we owe the proud distinction, that here the people range themselves on the side of the law, while in many countries a prisoner is always treated by his fellow-subjects as a persecuted man, suffering from a tyranny only the more powerful and the more to be detested, because clothed with the forms and armed with the weapons of justice.

Long, Gentlemen, may this wholesome feeling remain among us ; but it can only be retained and perfected by a sincere determination to let no impression, however strong and however well-founded, of the mischiefs resulting from the escape of the guilty, produce the slightest bias on our minds against the prisoner, or narrow by a single hair's breadth the full proof which the law demands.

And yet, Gentlemen, I should be much concerned if I could be supposed to think lightly of criminals escaping from justice. It is a grave misfortune : its example is most pernicious. One

unjust acquittal may raise hopes of a career of impunity in the breasts of hundreds exposed to seduction. In short, Gentlemen, I hold the acquittal of the guilty only less to be deplored than the conviction of the innocent.

But there are better means of repressing crime than by wresting the rules of law against the accused. And this leads me to occupy your attention for a short time upon the present state of crime in this country, so far as our scanty materials enable us to frame an estimate of its nature and extent. This done, we shall see more clearly the means for its repression.

By far the greater number of offences which are found in our calendars are offences against property. This alone, if other evidence were wanting, would prove, what indeed is notorious, the existence of a class of persons who pursue crime as a calling, and are not led astray by casual temptation, or by temporary indulgence of the passions. The numbers of this class it is impossible to assign with accuracy. From the best information I am able to obtain, I cannot place it much lower for England and Wales than a hundred thousand. The greater number of these unhappy persons are engaged in petty thefts. Those who are best acquainted with their habits, and who know how small a part of the value of what they steal they are able to retain for themselves, are of opinion that each one must, on the average, commit several offences per day to be maintained in the manner in which they are known to live. It is also found that, before the thief is finally withdrawn from society by transportation or death, his course of depredation extends over several years. These general facts, which are well ascertained, show how great must be the number of offences which are never detected, or, at all events, never prosecuted, as compared with those which find their way into our calendars, and are treated in most of our statistical tables as if they comprised the total amount of offences committed. How fallacious it must be to confound the number of convictions with the number of offences committed has been established by a valuable document published in the Report of the Commissioners for inquiring as to the best means of forming an efficient Constabulary Force. The paper to which I refer is a table showing the number of forged notes presented at the Bank of England, and the number of convictions for the forgery of bank

notes, between the years 1805 and 1837; and I find the proportion of convictions compared with that of offences was as 1 to 164. Now when it is recollected that the uttering of forged notes is the most difficult of all offences to commit with impunity, inasmuch as it cannot be done in secret, and behind the back of the injured party, it will be felt that if the proportion of forgeries committed with impunity is so large, that of thefts which escape detection must be much larger. It is equally clear that, while these proportions remain unchanged, it is vain to hope that the terrors of the law will avail to prevent those who follow depredation as a calling from being a numerous, and, in one sense, a flourishing class of the community. When, however, the public mind shall be practically conscious of the facts to which I have adverted, and in consequence shall withhold its sympathy from a prisoner, though for the first time convicted, if he shall appear to have resorted to depredation as a stated means of livelihood, then something may be done towards diminishing the numbers of the class, by permanently withdrawing the criminal upon his first sentence from his career of crime; either by transportation, or by imprisonment for a long term, whenever the discipline of our prisons shall be so far improved as to make them places where their inmates may be reformed, instead of more deeply corrupted.

But no change in the sentences of prisoners, or in the discipline of prisons, will avail to destroy, or in a very large proportion to lessen, this class, until by a more perfect system of police, and by a greater alacrity among prosecutors, the number of offences escaping detection and prosecution shall be diminished in a manifold ratio. Upon the ignorant and hardened thief conscience has no hold. The danger of his calling he looks upon as the necessary price of its pleasures; the applause of his associates stands him in the place of reputation. Even death upon the gallows, which is thus to his mind stripped of disgrace, he regards with feelings akin to those of the soldier looking forward to the perils of honourable war. Nothing, therefore, but such a multiplying of the risks of detection for each offence, as shall render it impossible to ply his trade, will break up his class. And to aid, as far as his means will allow, in this good work, is the duty of every man, and in an especial manner of persons like yourselves, who, by your position in

society, are possessed of power and influence. Birmingham has long been favourably distinguished from many other towns by the comparative excellence of its police: certain members of that body I have known for many years, and can bear testimony to the value of their services. But their force is too small. Though much has been done, much remains to do. The staple manufactures of the town being in metals, temptations to dishonesty are of necessity more numerous here than in many other places. They fall, too, on persons of tender age, often ill instructed to withstand them. They are held forth by the most cunning and nefarious of all the predatory classes—I mean the receivers of stolen goods. When these things are well considered—the loss of property, and the feeling of insecurity among the honest part of society, the degradation and misery of the guilty—then will the great subject of the repression and prevention of crime expand in every mind to its due measure of importance. Nor will the means of repressing crime be crippled, I am persuaded, by a false economy; for even contracting our views to a mere question of expense, it will not be forgotten that a depredator at large is maintained by society, and maintained in a most expensive manner. His prison must indeed be badly managed if he do not cost the country far more when at liberty than when in confinement.

These remarks have done little towards exhausting the subject. I have only touched on the means of repressing crime by acting on the criminal. The means of preserving the honest from falling into the snares of vice—the diffusion of knowledge—the formation of virtuous habits by moral and religious training—these are topics on which I must resist the temptation to enlarge. The inhabitants of Birmingham have not been wanting in their attention to these important duties. This I well know; for, having spent my youth in this my native town, and having, in some small degree, assisted in the labours of your Sunday-schools, I can testify to their zeal and perseverance. What they have done will convince them better than any words of mine both of the value of their labours and of the necessity for still further extending them. For it is to education, in the large and true meaning of the word, that we must all look as the means of striking at the root of the evil. Indeed, of the close

connexion between ignorance and crime, the calendar which I hold in my hand furnishes a striking example. Each prisoner has been examined as to the state of his education, and the result is set down opposite his name. It appears, then, that of forty-three prisoners, only one can read and write well. The majority can neither read nor write at all; and the remainder, with the solitary exception which I have noted down, are said to read and write imperfectly; which necessarily implies that they have not the power of using these great elements of knowledge for any practical object. Of forty-three prisoners, forty-two then are destitute of instruction; and what the one remaining individual has been taught probably comprehends no more of education than the ploughing and harrowing of the soil does of agriculture. There can be no harvest without these introductory labours, it is true; but neither will they alone produce the crop.

Gentlemen, it now only remains that I should address a few words to you on your own peculiar functions. Anciently, as you know, grand juries filled the character of prosecutors, presenting such offences as came to their knowledge, or as were brought under their notice by inferior officers having the care of the public peace. In those early times, that preliminary examination before magistrates, which now in almost all instances precedes the exercise of your duties, was little known. Your functions would, therefore, be almost essential to the due administration of justice. At the present day, the necessity for imposing your labours upon you is not so obvious; and in the metropolis it has been found that the secrecy with which by law witnesses give their evidence before grand juries has offered facilities to criminals to tamper with them, and to procure bills of indictment to be ignored, upon which, if a trial had been had, and the witnesses had given their evidence under the responsibility arising from public examination, convictions would certainly have been obtained. I shall use all such means as I possess for preventing justice from being thus defeated; and you on your parts will recollect that the sole question for your consideration is, whether or not there is sufficient evidence laid before you to justify a conviction, unless the facts are answered on behalf of the prisoner.

But, Gentlemen, although the original utility of the grand

jury may have decreased, or even passed away, it is nevertheless an institution of great importance. It is of the genius of our constitution to interest and employ all ranks and conditions of men in the administration of justice. By this provision, courts are made really public; not only as they are open to all to become auditors, but inasmuch as the representatives of the various classes are called upon to give their attendance. In an assembly so collected you have a right to be heard; you have a right to address to the Bench any matter connected with the administration of the law which, in your opinion, requires public animadversion; and your suggestions will be, in this Court, as they are in all others, received with respect. It is through you, also, that the Bench addresses the public at large, knowing that what you consider worthy of your attention will be treated with deference by all those whose duties or interests are involved in what is laid before you.

Perhaps you may be of opinion, Gentlemen, that I have too fully availed myself of my privilege. If so, I trust you will find my excuse in the deep interest I feel in the people among whom I am to administer the laws—a people to whom I am allied by the strong ties of birth and of friendship.

On the conclusion of their labours, the Grand Jury requested the Recorder to print his charge.

SEQUEL.

IN a day or two after the conflict to which I have more than once adverted, the leaders put forth a placard, referring, in seditious language, to what had happened. Several of them were apprehended, and, in default of bail, were committed for trial at the ensuing Warwickshire Assizes, but afterwards procuring bail, were received on their return to Birmingham by a riotous mob, who set on fire several shops in the market-place, before the military were summoned; which was not done until after it was found that the body of London police, though still remaining in the town, were too much discouraged by their defeat to venture upon another attack. A considerable amount of damage was caused by these incendiary fires. Some of the

rioters were apprehended, and convicted of a felonious riot and of arson. The leaders, whose return to Birmingham had been so disastrous, were convicted of seditious libel, and imprisoned for twelve months in the county gaol.

The opportunity thus afforded them for reading and reflection was not thrown away. One of them, Mr. Lovett, a man of ability, wrote a book while in prison for the use of Chartists, containing a plan of education well adapted to the requirements of working men, which I read on its publication with great pleasure. One passage, I remember, struck me very much. Lamenting the ignorance of the labouring classes, he candidly expresses his satisfaction that he and his coadjutors had hitherto failed in their aims at investing them with political power; for although he still looked forward to the time when they will possess it as not very distant, yet he was of opinion that if it had come before they were prepared by education to make a good use of it, the consequences would have been fatal to the public welfare.

That Mr. Lovett and his colleagues were sincere men, however mistaken or hotheaded, I entertain no doubt; and here I may say, that the prevalent opinion which stigmatizes the demagogue as a designing person, promoting selfish objects under pretence of advancing the public weal, lays down a rule which, to say the least, contains a great number of exceptions. The accidents of life have enabled me to see much of these agitators, and I have often found them persons only differing from their followers in the preponderance of the higher qualities.

What they believe to be true, their zeal, courage, and sense of duty impel them to act upon as true; whereas many who hold the same tenets, and who love to expatiate upon them, shrink from any sacrifice in their support.

The prevalent opinion to which I have adverted is strengthened by circumstances which, if well understood, would not infrequently lead the candid mind to an opposite conclusion.

Sudden and somewhat violent changes of sentiment often occur among demagogues. These changes, which are not unnaturally attributed by those who are acquainted only with the bare fact, to want of principle, are often the result of a conscientious adherence to opinions, until they have been seen to lead, by a necessary consequence, to unexpected and injurious results.

The earnest sincerity which urges these men to reduce to

practice what they profess gives them the teaching of experience, and engages them in reflection; whereas the lazy and the timid, who feed their minds upon mere speculation, have little motive and little opportunity for discovering their errors.

Leaders in every class, high or low, soon find—very often to their great surprise—that to succeed in governing others, something more is required than good qualities and right meaning on the part of governors; and their attention is necessarily drawn to defects in the body to be governed. Indeed they view the whole affair of government under a new aspect; and although for a time they may be hurried on by excitement and the power which associates have over each other, yet the truth will eventually force its way; and that period is often accelerated by some event, like imprisonment or a fit of sickness, which withdraws them for a time from the field of action.

From these considerations I have regretted that of late years the distinction between political prisoners and ordinary criminals has been well nigh obliterated. The general instinct of the civilized world in all ages has recognised the difference. Political offenders have been felt to be, if not exactly prisoners of war, yet bearing some resemblance to such captives. To keep their persons in safe custody, or even to take their lives on great occasions, gives no shock to public sentiment: but to subject them to degrading treatment, to crop their hair, clothe them in a prison dress, march them to and fro under the command of a turnkey, prevent them from supplying themselves with books and the comforts which habit has changed into necessities, and, above all, to lay harsh restrictions on the visits of their friends, is so revolting to the most ordinary sympathies, that magistrates and governors of prisons will not subject them to such indignities and hardships unless the legislature has made their infliction imperative.

The political prisoner, when his treatment is left to the ordinary feelings of mankind, is dealt with as a person in misfortune, who must undergo the sufferings attached to his position, but whose feelings are not to be wounded by contumely. I admit it would not be difficult to find instances in every age wherein the principle has been grossly violated, but such violations have been condemned by universal consent whenever the excited feelings by which they were caused have subsided.

Political actions assume such different hues as time rolls on, that society is often spared much regret—perhaps remorse—by having treated them in a forbearing spirit.

I am old enough to remember Sir Francis Burdett sent to the Tower for a letter which, if published now, would, after the high seasoned language in the use of which the press has for many years been permitted to indulge, be remarked, if noticed at all, for tameness. He subsequently passed a year in the King's Bench Prison for writing a letter to Mr. Bickersteth (afterwards Lord Langdale), censuring the conduct of the magistrates and yeomanry with regard to the conflict popularly called the Manchester massacre.

Still later, upon a supposed change of opinions, which he never admitted, he was taken into favour by the political party to which he had been obnoxious; and although after this event he did not stand as formerly with his old partisans, yet it would have been a subject of painful remembrance to the whole nation if this high-bred English gentleman had been made to undergo, in any part of his life, treatment which would have outraged his feelings of self-respect.

Mr. Bickersteth, who published the letter in the newspapers, rose to be Master of the Rolls, and died a peer of the realm.

Mr. Leigh Hunt, who was imprisoned in the gaol of Horse-monger-lane for a libel on the Prince Regent, had assigned to him spacious and airy apartments, which he was permitted to decorate and furnish at his pleasure; and he is now in the enjoyment of a pension granted by the niece of the Sovereign who was the object of his attacks.

The poet, James Montgomery, lately deceased, who had undergone imprisonment more than once for political libels, had also a pension derived from the same source; and neither with regard to himself nor Mr. Hunt was a single voice raised to object against the bounty of the Crown being so applied.

Poor Fergus O'Connor was not so fortunate. His treatment in York Castle, when convicted of sedition, was harsh and degrading; and necessarily so, as the law then stood, the visiting magistrates having had no power to alleviate his condition.

Again, the distinction is defensible on other grounds which would extend the exemption from degrading discipline to a larger class. As it is intended that the criminal shall be, after

the expiration of his sentence, restored to the world a free man, in the expectation that he will earn his livelihood by honest means, and so conduct himself as not to fall again under the animadversion of the law, nothing can be more pernicious than to have set a mark of degradation upon him. The difficulties to be encountered in reforming offenders are of two kinds; the first arise out of their evil desires,—the second from their bad habits. It is obvious that no progress can be made in reforming the habits of criminals until their aspirations are raised, and until they are brought into a frame of mind in which they desire to do right, however they may be prevented from acting in conformity with this desire by the inveterate habit of doing wrong. No discipline which fails to ally itself with the good feelings of prisoners will have any permanent effect on them. They may be made outwardly to conform to a prescribed routine, 'with eye-service as men-pleasers;' but the moment they are again their own masters, they will assuredly, as every day's experience amply proves, fall back, or, indeed, rush back, to their former courses.

Now, any observances which degrade a prisoner, and more especially if he is conscious that such is the object with which they have been instituted, create so strong a feeling of hostility in his mind towards those under whose control and guidance he is placed, as to neutralize their efforts, and very often to urge him into an opposite line of thought and action to that which they are exhorting him to pursue. At all events, he is made reckless; and finding that he is the object of contempt on the part of society, as evinced by the law which afflicts him with degradation, self-respect is gradually annihilated, and he becomes an alien to his race,—an outcast in heart as well as in social position.

We will, however, suppose that all difficulties are surmounted, that he is truly repentant, lends a willing ear to religious and moral instruction, and aids to the best of his ability in the work of his reformation, striving to overcome his vicious habits with zeal and perseverance. Even then he will find that the degrading circumstances under which he has been placed have strengthened the barrier already but too formidable against his being received into honest employment—a most lamentable state of things, which has been, and still continues to be, the daily cause of relapse into crime.

Let me not be misunderstood. I must not be supposed to contemplate or even to desire that crime should be unaccompanied by disgrace. Fortunately, the disseverance is impossible. The connexion was not created by the law; it would have come into existence had human legislation never interposed. Therefore no change in the law can prevent its operation. The mischief to which I am directing attention is that of an artificial disgrace created by expedients which the law has prescribed, and which the sufferer will regard as dictated by malice prepense. Prisoners are not so devoid of discrimination as to be unable to feel the distinction. The natural disgrace which belongs to their crimes does not irritate them. They submit to it, as we all do to the inevitable events of life, with such fortitude as the character of the individual supplies to him; and this natural disgrace has, therefore, no tendency to produce in his mind feelings of ill-will towards those about him.

It is, however, worthy of remark that the object of the observances to which I have referred was not in its origin to inflict disgrace. They were imposed upon classes already degraded in manners and habits with a view to their improvement in decency, cleanliness, and health. Personal cleanliness, so conducive to health, and so essential to self-respect, becomes all-important in a prison; for confinement is at the best unfavourable in its effects on the human frame, and every counter-acting expedient must, therefore, be rigidly enforced. And as voluntary ablutions are not to be expected, these duties must be made compulsory, or they would soon pass into disuse and oblivion among the majority of those who are the inmates of our gaols. Then, again, as to dress. The clothing of prisoners is often ragged and dirty; and when his clothes are in a good state, it is a kindness to the needy prisoner to lay them by that he may leave the prison in decent apparel. With regard to the hair, it is obvious that cleanliness and freedom from vermin are promoted by keeping it well cropped. That a large class is therefore benefited by these arrangements, and consequently rather raised than depressed, cannot be doubted; and the benefits are so obvious as to be soon recognised by the prisoner, however reluctant he may have been to the experiment.

Touching visits from friends, it is unhappily true that, as regards the majority of prisoners, unrestricted visits would be an

enormous evil, both to the individual and the public, since nothing could more tend to paralyse the better influences under which he is placed than to suffer him to come into contact with his former associates.

But these considerations by no means justify, on the contrary they offer strong grounds for condemning, an iron rule which shall impose observances upon all because they are salutary as regards a part, even though that part may be the majority. A sound discretion should, I think, be exercised in each case. Let the criminal who, whatever his offences may be, has the merit of personal decency, have the benefit of such merit. To produce artificially an equality in abasement is neither wise nor just. Such equality, moreover, is eminently deceptive, and in truth is inequality of the worst kind. Take the case of a young woman, who has not been able to resist the temptation of purloining some coveted article of dress from the shop of a haberdasher. Is it equal treatment to subject her to the discipline which befits a drunken harridan, brought for the tenth or fiftieth time back to prison in the stupor of intoxication, covered with the mud and filth collected upon her person and her clothes in her disgusting orgies? If you cut off the hair of the young shop-lifter, and if you compel her to wear the same dress with her loathsome fellow-prisoner, have you inflicted equal pain by this equality of treatment? Certainly not; in the latter case you have relieved the prisoner from a portion of the revolting misery produced by her own misconduct, and restored her to something approaching to comfort; whereas in the former case, you have shocked and violated all her feelings of self-respect, thereby inflicting exquisite pain, which will not be forgotten, but which, nevertheless, is calculated to plunge her still deeper into crime than she has yet fallen. Let us remember, above all, that the pain which she endures is caused by feelings which the public interest demands should not only be treated with respect, but should be cultivated; and that although she is sent to prison to be punished for doing wrong, the keenest suffering which she is made to undergo does not arise out of her offence, but out of those desires and sentiments which, however they may have been ill-regulated in her particular case, are nevertheless essential parts of the female character, for without these requisites it can neither command respect nor conciliate regard.

A memorable instance of this affected equality, and real inequality, arose during the Great Exhibition of 1851. A visitor driving towards the Crystal Palace, in a manner contrary to the prescribed regulations, was stopped by a policeman, who seized the horse's head for the purpose of turning the carriage into the right path. The gentleman, irritated by this act of the policeman, who was, however, fully justified in the measure which he adopted, yielded to sudden passion, and struck the officer more than once with his whip. He was apprehended for the assault, and the magistrate, justly considering five pounds (the highest fine which he could impose) a very inadequate penalty for the offence, sentenced the accused to imprisonment for a week in one of the metropolitan gaols. In so acting he faithfully discharged the duties of his office, and was not answerable for the consequences. But those consequences were, that the gentleman, a military officer, was compelled to suffer the disgrace pertaining to the forced observances of the prison. An opinion prevailed that such infliction would necessarily drive him out of his profession; this result, I believe, and I am very glad to believe, did not follow. He bore his punishment well, neither defying it nor repining under his lot. At first the popular feeling was strongly against him, and in favour of the sentence. Probably his conduct under his calamity may have turned the current, if not in the world at large, at all events in military circles. I must own, I never could sympathize with the feelings of exultation which were manifested at the disgrace of this officer. To me it seemed that the Legislature was much to blame in having left the law in a position which made it impossible for the magistrate to do justice in a satisfactory manner, whatever might be his decision. If 5*l.* were insufficient, 500*l.* or 5000*l.* would at all events have met the requirements of the case, and what gentleman would have hesitated a single moment between such a sacrifice and the alternative punishment, if his means had enabled him to compass it. The Legislature, by limiting the power of the magistrate as to fines, threw upon him the duty of committal as the only course which was open to him; and it then, by its harsh and indiscriminating rules of prison discipline, superinduced upon that committal consequences which will probably fester in the sufferer's mind to the day of his death. As it strikes me, nothing can be more absurd

than to place so strict a limitation on magistrates with regard to fines, and yet to leave it in their power to administer a punishment, compared with which, in cases like that under consideration, scarcely any pecuniary loss would not have been joyfully accepted as a lenient alternative. The obvious remedy is to raise the limit of the fine, but the tenderness of our law in matters of property, and its indifference in those which regard the character, the health, and the good feelings of the subject, are among its most notorious and inveterate defects.

Seventeen years have passed away since I commented on the daily injustice committed by the State in withholding from prisoners the pecuniary means for producing evidence in their defence. This defect in our jurisprudence yet remains. Lord Brougham, however, among the resolutions on criminal law procedure which he put on the journals of the House of Lords in March, 1855, has one to this effect, 'That the costs of every person tried and acquitted, or discharged for want of prosecution, should be paid out of the county rates, on certificate of the court before whom he was tried, or brought for trial, or of the magistrate by whom he was discharged.'* May this just provision soon find its way into the statute-book !

I cite in my charge the instance of Belgium.

In a conversation with the Minister of Justice, in the year 1833, at Brussels, I found that the annual expense for such witnesses, for the whole kingdom, having a population exceeding four millions, only amounted to 20,000*l.* a year.

The payment of his witnesses is one of the many safeguards with which the law of Tuscany has provided the prisoner on his trial. The '*Atto di accusa*' [indictment] being lodged, and a copy given to the prisoner, his counsel is permitted a free inspection of the depositions against his client; when, if he intend to call witnesses, he must give notice of their names, and what they are expected to prove. This being done, the president of the court permits such of the witnesses to be summoned as appear to him, from the note of their expected evidence, it would be useful to the ends of justice to call, and

* Resolution xii.—*Lord Brougham's Speech on Criminal Law Procedure.* Ridgway, 1855. Still, an advance of money before trial would in many cases be essential to bring the witnesses from their homes.

they are brought at the public expense; the prisoner always having the right, as with us, to produce, at his own cost, any evidence he may judge material to his interests.*

The State of Massachusetts, where the law of England is still the basis of its jurisprudence, has not overlooked the claims of justice in this particular. On the trial of Professor Webster, at Boston, in the year 1850, for the murder of Dr. Parkman, the Attorney-General made the following statement regarding the costs incurred by prisoners in bringing forward their witnesses:—‘The law of this commonwealth places its entire treasury at their command. Every dollar expended for witnesses, or for the officers who summon them, is paid by the commonwealth, as well for the prisoner as for the Government.’† The Code Napoléon contains the following provision on this subject:—

‘Après l’audition des témoins produits par le procureur général et par la partie civile, l’accusé fera entendre ceux dont il aura notifié la liste, soit sur la faits mentionnés dans l’acte d’accusation, soit pour attester qu’il est homme d’honneur, de probité, et d’une conduite irréprochable.

‘Les citations faites à la requête des accusés seront à leurs frais, ainsi que les salaires des témoins cités s’ils en requierent; sauf au procureur général à faire citer à sa requête *les témoins qui lui seront indiqués par l’accusé*, dans le cas ou il jugerait que leur déclaration pût être utile pour la découverte de la vérité.’‡

Upon the passage, ‘*Les témoins qui lui seront indiqués par l’accusé*,’ M. Rogron has the following note:—

‘Cette disposition vient au secours des accusés pauvres; mais elle n’eut jamais manqué d’être réclamé par tous les accusés si la loi n’eut pas laissé à la prudence du procureur général de citer ou non les témoins selon qu’il jugera leur déclaration utile.’§

It would be an interesting, though a somewhat humiliating task, to ascertain how many other nations are in advance of ourselves in this particular. We take pride in our love of

* First Letter on Tuscan Jurisprudence, *Law Review*, Feb. 1853.

† Stone’s *Report*, p. 262.

‡ *Code d’Instruction Criminelle*, Art. 321.

§ *Code d’Instruction Criminelle Expliqué par ces Motifs et par Exemples*. Par J. Rogron, Avocat au Conseils du Roi et à la Cour de Cassation.

justice. It would not be easy to reconcile this boast with the history of our treatment of prisoners under trial.

A striking exemplification of this painful truth is furnished by the cases of Elizabeth Canning and Mary Squires, as reported in Howell's *State Trials*, vol. xix. Of these cases, Mr. Lawrence has given a careful abstract in his *Life of Fielding*.

'In the month of January, 1753, Elizabeth Canning disappeared from her master's service for about eight-and-twenty days; and she accounted for her absence, on her return in a piteous plight to her mother's house, by stating that, on the night of the 1st of January, she had been seized by two men in Moorfields, who robbed her, tied her hands behind her, and struck her a blow on the head which rendered her insensible. On regaining her senses, she found herself on the high road, with the two men who had robbed her, and who dragged her to a house kept by a woman named Wells, at Enfield, about eleven or twelve miles from Moorfields. Here she saw Mary Squires, the gipsy, who treated her after the following extraordinary fashion. Finding that she would not comply with her infamous solicitations, this woman cut off her stays, and forced her into a room, or a kind of hay-loft, where there was a fire-place, but no bed nor bedstead, nothing but hay to lie on, a pitcher almost full of water, *and about twenty-four pieces of bread, to the amount of a quartern loaf on the whole*. Here she remained, according to her statement, from the morning of the 2nd of January, till the afternoon of Monday, the 29th, seeing no human creature all the time except once, when some one peeped at her through a crack in the door. On Friday, the 26th, she had eaten all the bread, and on the 29th she had drunk all the water; after which she made her escape by breaking down a board, which was nailed up at the inside of the window, and so was enabled to open it and jump down on the ground. She had previously never attempted to escape, nor had it entered into her head to do so.

'Such were the principal portions of the marvellous story told by Elizabeth Canning to account for her mysterious disappearance. But it is remarkable that on her first account of her imprisonment, she said nothing about the *twenty-four pieces of bread*. This embellishment of her story appeared in her subsequent information, sworn before Fielding, to which we

shall presently refer. Her first statement was, that there were *four or five pieces* of bread, and some water, on which she lived till she made her escape. As she professed to describe the house in which she had been confined, and its situation, a warrant was granted by one of the London aldermen, on the 31st of January, for the apprehension of the person by whom it was tenanted—a woman named Wells. Armed with this warrant, Canning, accompanied by her master and some friends, proceeded to the place in question, where, with some hesitation, she identified the room in which she had been confined, although in many important particulars it differed from her previous description ; and there was no lock on the door, or any appearance of one having been there. She also pointed out Mary Squires, who was a poor old gipsy woman, (and who, when the party arrived at Wells's house, was unconcernedly smoking her pipe at the fire,) as the person who had robbed her. The miserable creature immediately started up, and, after a stupid gaze of astonishment, exposed her hideous face, which till then was almost covered with a cloth, and exclaimed, 'I rob you ! take care what you say ; if you have once seen my face you cannot mistake it, for God never made such another.' She added, without the least hesitation, that at the time the alleged robbery was committed, she was above one hundred miles off in Dorsetshire.

'After the apprehension of Wells and Squires, Elizabeth Canning attended to swear her information before Fielding. Her case had by this time excited great public interest, and the justice had been privately consulted upon it. A Mr. Salt, who had been engaged as a solicitor on Canning's behalf, had previously taken Fielding's opinion on the best mode of bringing the offenders to justice, and of framing an indictment against them ; and at that gentleman's request he reluctantly consented to allow Canning to swear her information before him. Accordingly, on the 7th of February, the information was sworn, as proved on the trial of Canning ; by Mr. Brogden, Fielding's clerk. The justice had previously issued his warrant to apprehend all persons who should be found at Wells's house, as disorderly persons ; and, thereupon, two women, named Hall and Natus, who had been lodging there for some time, were secured and brought before him. 'Before he had seen Hall,' says a

writer in *The Gentleman's Magazine*, 'he was informed *she would confess the whole.*' He found her trembling and in tears; he endeavoured to soothe and comfort her, assuring her that if she would tell the truth he would protect her. She desired some time to recover from her fright, which was granted, and a chair was ordered her; and, after some time, he began to examine her, and continued to do it in the kindest manner, till she had been guilty of so many contradictions and prevarications, that he told her he would leave her to stand or fall by the evidence against her, and advised Mr. Salt to prosecute her as a felon; upon which she begged to be heard once more, and said she would tell the whole truth, accounting for her unwillingness to do it from her fears of the gipsy and Wells. After this singular scene, Hall corroborated Canning's story in every important particular! Squires and Wells were soon afterwards tried at the Old Bailey for felony, and, on the testimony of Canning and Hall, were convicted, and received sentence of death.

'Many grave reflections are caused by a perusal of these proceedings. The poor, ugly, old gipsy woman, Mary Squires—unpitied, unprotected, and the object of public indignation,—had no alternative but to surrender herself to her fate. The evidence by which her innocence could have been made manifest was in existence, but she had no means of producing it in a satisfactory form, and the law afforded her no facility for doing so. On the subsequent trial of her accuser, Canning, for wilful and corrupt perjury, a perfect *alibi*, as it is technically called, was established for her at the expense of the Crown; on her *own* trial she was helpless, and deprived of the opportunity of making a proper defence. The injustice from which she suffered in this respect must appear to every reflecting person a stain on the administration of our criminal law, and it is a stain which has not yet been removed. Whilst, on the part of the prosecution, the attendance of necessary witnesses is secured by payment of their reasonable expenses, not a farthing is allowed to the witnesses who are produced to establish a prisoner's innocence. This is surely not even-handed justice; and it is incumbent on law reformers and the Legislature to remedy this serious defect.

'Many innocent persons, like Mary Squires, have been made the victims of invented stories, and such conspiracies are commonly defeated by evidence which the poor and helpless are

unable to procure. Three witnesses, indeed, attended on the part of Squires, who proved that she was at Abbotsbury, in Dorsetshire, in the month of January, 1753 ; and one of these swore that she had lodged in his house from the 1st to the 9th ; but their evidence was wholly discredited, and they were committed for perjury. Had the unfortunate creature possessed the means, she could, however, have produced an overwhelming amount of testimony to corroborate them ; and on the subsequent trial of Canning, her accuser, above thirty witnesses were produced by the Crown to establish her complete innocence, and the absolute impossibility of her having been at Wells's house at the time of the alleged robbery and outrage. Susannah Wells, the other prisoner, and the tenant of the house, was defended by counsel ; but the state of the law at that period did not permit an advocate to address the jury on behalf of his client in a case of felony ; all that he was allowed to do was to cross-examine the witnesses, and he had no opportunity, therefore, of forcibly exposing their contradictions or the improbability of their story. Added to all this, public prejudice ran high against the unfortunate accused. The minds of the jurymen had been prepossessed against them by inflammatory statements in the public newspapers, and an infuriated mob loaded them with execrations on their way to Newgate, and clamoured for their conviction. But the Lord Mayor, Sir Crisp Gascoigne, having learned that Hall had afterwards retracted the evidence she gave on the trial, with praiseworthy humanity forwarded a memorial to the king, soliciting a respite, and thus their lives were saved.

‘ In the course of Canning's trial for wilful and corrupt perjury, which took place in the month of April, 1754, Fielding's conduct in the examination of Hall did not escape observation. From the account of that examination, as quoted from *The Gentleman's Magazine*, it is questionable whether, in his anxiety to secure the conviction of the presumed offenders, he did not display more of the zeal of the partisan than the impartiality of the magistrate. It may, indeed, be urged in his favour, that he was deceived by the demeanour of Hall, and that he attributed her hesitation and prevarication to her fear of the vengeance of Wells and Squires.

‘ But it was complained of him, and with great justice, that, instead of taking her confession *vivâ voce*, he allowed her to be

sent out of the room with *Canning's solicitor*, when her evidence was reduced to writing, and was two hours in preparation. 'After this,' said Mr. Willes, the prosecuting counsel against Canning, 'what mighty wonder is there that, when she came into the justice's presence again, she should repeat her lesson without the least hesitation?'

'After a very lengthened trial, Elizabeth Canning was convicted, and sentenced to seven years' transportation—the highest punishment to which her offence was liable by law, and certainly not adequate to its enormity. Many of the aldermen, however, although the falsity of her story was proved beyond a doubt, strenuously advocated a milder punishment, eight of them voting for six months' imprisonment. * * * * *

'As to Canning, she persisted to her death's day in maintaining the truth of her story. Though great interest was exerted to procure a reversal of her sentence, it was carried into execution, and she was shipped to the plantations, never to return. She died at Wethersfield, in Connecticut, on the 22nd of July, 1773; and the record of her death in *The Gentleman's Magazine* for that year is accompanied by the observation, 'that notwithstanding the many strange circumstances of her story, none is so strange as that it should not be discovered in so many years where she had concealed herself during the time she had invariably declared she was at the house of Mother Wells.' '*

In 1836, Lord Lyndhurst, in his speech in the House of Lords on the Prisoner's Counsel Bill, said, while adverting to the strange and capricious disabilities under which prisoners laboured with regard to the aid of counsel—

'I shall be enabled to show to your lordships that these are remnants of a barbarous code of laws relating to felons, which have been all got rid of with the single exception of the anomaly which it is the object of this bill to remove. Formerly, in cases of felony, the counsel were not allowed to cross-examine the witnesses, or to suggest objections on points of law. The unhappy and ignorant prisoner at the bar had the liberty of suggesting a legal objection, it is true; but he must do so of himself, without any consultation with counsel: it was taken into consideration by the judge, and if he thought fit, the

* *Life of Henry Fielding.* By Frederic Lawrence. London, 1855, pp. 320-26.

question was argued by counsel appointed for the purpose. In cases of felony, no witnesses were examined on the part of the prisoner, until Queen Mary sent down directions to the Chief Justice of the Court of Common Pleas to take evidence on the part of the accused, as well as against him. Still the law remained imperfect, because, though witnesses were examined, they were not examined upon oath. Lawyers are sometimes very astute at finding out reasons to support every existing institution, and they assigned a very singular reason for this practice. They said it originated in lenity towards the prisoner, because the witness, not being bound by an oath, would speak largely and beneficially for him. This was rather a singular doctrine, the object of a court of justice being to elicit the truth; but let your lordships mark its practical effect, as exhibited in numerous instances in the State Trials—the witnesses against the prisoner being examined on oath, and those in his favour not being examined on oath. The moment the judge began to sum up the evidence to the jury, and to contrast the evidence for the prosecution with that given on the part of the prisoner, he always took care to inform the jury that, in estimating the degree of weight which was to be attached to the testimony on each side, they must not lose sight of the important fact, that the witnesses for the prosecution were examined on oath, whilst those for the defence were free from that obligation.*

The practice of refusing to the prisoner the right of rebutting the evidence for the Crown, given upon oath, by evidence offered under the same sanction, is thus reprobated with just indignation by Mr. Phillimore:—‘Among the many acts of flagrant iniquity established by the judges, and revered by the English, under the name of the common law, perhaps the most perfectly tyrannical and oppressive was the regulation that witnesses in behalf of the prisoner should not be sworn. For this abominable injustice, Lord Coke, who as advocate and as judge invariably enforced, and as legislator never attempted to amend it, declares there was not so much as a *‘scintilla juris.’* It was a direct violation of natural right, committed by the judges, and followed implicitly, because it was a precedent. The House of Commons, indeed, when felonies committed by

* *Mirror of Parliament*, 1836.

Englishmen in Scotland were ordered to be tried in one of the three northern counties, against the efforts of the Lords and the Crown, carried a provision, that the witnesses for the prisoner should be examined upon oath. This was in the year 1607. Yet, with an infatuation which will surprise no one who has studied the history of the reformation of admitted abuses in this country, the old absurd law was allowed to prevail in the case of all persons *not* tried for a felony committed in Scotland, or in one of the three northern counties, formerly stigmatized as it was by an act of the Legislature; nor was it until the first year of Queen Anne's reign that a practice so repugnant to the common instincts of social creatures was, notwithstanding the judges, abolished, and it was provided that all witnesses for a prisoner, as well as those against him, should be examined upon oath.*

This passage is only one of many in Mr. Phillimore's book, showing how appropriate is the motto which the author has prefixed to his work:—

'And judgment is turned away backward, and justice standeth afar off; for truth is fallen in the street, and equity cannot enter.'—Isaiah lix. 14.

On the origin of these barbarous prohibitions no light has been thrown, save by conjecture.

'The grand jury, or commission of twelve or more, to make presentment of offences, is,' says Mr. Robert Hall, 'essentially Saxon, only the proceeding was more like a *trial* by grand jury, if there were reason to suppose that the accused was permitted to take any part in it. Their duties were, in fact, more like those of the coroner's jury of the present day. They were called upon to inquire, not whether there was a sufficient *prima facie* case against A. B., but whether a crime had been committed, and who was the criminal. They had, therefore, to give a careful consideration to the whole case. * * * * *

'I have sometimes thought that in this state of things I could detect the reason for some anomalies which long disfigured our criminal procedure. Why was the prisoner not allowed to call witnesses? Because he was allowed to insist on all being called who had gone before the grand jury.†

* Phillimore's *History and Principles of the Law of Evidence*, p. 484.

† Hall's *Inaugural Lecture on Common Law*, p. 14.

Mr. Hall offers, also, a conjecture as to the origin of the remarkable distinction which prevailed for so many ages in our law, by virtue of which the prisoner, while permitted the assistance of counsel to argue points of law for him, was deprived of all professional aid as to matters of fact ; but it would not be easy to make the ground of his hypothesis intelligible to the general reader.

Nor is it clear that in very early times full counsel was disallowed to the prisoner. Several authors, among whom may be mentioned Blackstone, believe this disability to be an innovation on the more ancient common law.*

That twenty years have scarcely elapsed since the law of England, so vaunted for its humanity, refused to prisoners on trial for their lives the aid of counsel to address the jury on their behalf, is a fact which will surprise many readers who cannot be considered as ill-informed persons. This I know from actual experience.

So completely has the propriety of the change which took place in 1836 approved itself to all the world, that controversy on the subject has long ago ceased ; consequently, those who have grown up since the passing of the Prisoner's Counsel Bill were not unlikely to be ignorant of the monstrous enormity which had so long hampered the administration of justice, and so often perverted its results.

That great bill gave to every person accused of any offence the right to be heard by full counsel, as it is called ; that is to say, his advocate may not only cross-examine the witnesses against him, call and examine witnesses for him, and argue points of law which arise on the trial, but he may now address the tribunal which is to decide upon the facts, whether a jury, as in the case of a commoner, or the House of Lords, as in that of a peer of Parliament. It was attempted to give him the last word before the summing-up of the judge. I could wish that this humane provision had formed part of the Act.

At various times, and by various means, full counsel had been gained in all cases except in felonies ; but as this is a more numerous class of offences than all the others

* Blackstone's *Commentaries*, vol. iv. p. 355.

put together, the hardship undergone by prisoners was one of daily and hourly occurrence. The flagrant injustice which had been perpetrated under the Stuarts in trials for high treason, for want of counsel and sworn witnesses for the prisoner, had so forcibly impressed itself on the public mind, that, within seven years after the revolution, it was provided by statute that in all such cases both defects should be remedied.*

No small part of this impression was doubtless caused by the trial of the seven bishops, whose acquittal had such a powerful effect in producing the overthrow of James II.

The charge against the bishops was that of publishing a seditious libel, contained in a petition which they had presented to the king, directed against the lawfulness of the dispensing power assumed by the Crown.

The offence charged was inferior in degree to felony, and the defendants were therefore entitled to full counsel. The advocates for the prisoners, among whom Somers, then a young man, greatly distinguished himself, attacked the dispensing power with courage, learning, and eloquence; and having succeeded in convincing the jury, they must, by the verdict delivered on that memorable day, be deemed to have given the death-blow to this odious doctrine.† Hence, it would be deeply felt that the interests of the public, as well as of the prisoner, called alike for the extension of the same privilege to trials for high treason which had wrought such excellent results in a trial for misdemeanour. Nothing, however, can show in more striking colours our general apathy to the wrongs of prisoners, and our slavery to habit, than that the Legislature should have stopped short at high treason, and should not have extended the remedy to cases of felony, and thus made it as broad as the evil with which it was to cope.

The inconsistent and unmeaning state of the law, when tried by any principle, will be made obvious by a short extract from my evidence before the Committee of the House of Lords, in the year 1835:—

Q. ‘In cases where popular feeling is a good deal excited, where men are tried for riot or insurrection, do not you think

* 7 William III. c. 3.

† Macaulay's *History of England*, vol. ii., chaps. 8 and 9.

it [a speech to the jury] might operate too much in favour of prisoners?'

A. 'Riots are in general misdemeanours, and insurrections are high treason; and, in misdemeanours and high treason, the law, as it stands, allows full counsel to prisoners. The caprice of the law, in this respect, is almost ludicrous. I am charged with holding up my stick at another; he prosecutes me for a common assault; my counsel may speak for me the whole day; but let that stick have a nail at the end of it, and let me be accused of puncturing my opponent with it, and my alleged offence becomes a felony; then, my life being at stake, my counsel cannot speak; but let me be charged with doing it as an overt act of treason, and with striking at some one in the prosecution of a design (for instance to compass the king's death), and then, when it becomes the highest crime known to the law, I am allowed full counsel! '*

Who can measure the injustice and cruelty which this delay of a century and a half must have inflicted upon that most unhappy class of men,—the class judicially accused of crime! Nor can this long period of apathy be altogether attributed to want of reflection. The minds of men had not been unconscious of the injustice which they continued to practice. As early as the year 1684 even Jeffreys condemned the prohibition. In his summing-up on the trial of Thomas Rosewell, a Dissenting minister, for high treason, he told the jury that 'he thought it a hard case that a man should have counsel to defend himself for a twopenny trespass, and his witnesses be examined upon oath; but if he stole, committed murder or felony, nay, high treason, where life, estate, honour, and all were concerned, that he should neither have counsel, nor have his witnesses examined upon oath.'†

In the year 1749 appeared Fielding's greatest work, *Tom Jones*, where Partridge is made to convey a lesson which must have been read by thousands without producing any practical result. He reports a trial, at which he represents himself to have been present, before the notorious Mr. Justice Page:‡

'Well, at last, down came my Lord Justice Page to hold the

* House of Lords' Committee for Prisoner's Defence Bill, 17th July, 1835, p. 14.

† Howell's *State Trials*, vol. x., p. 207.

‡ "Hard words or hanging, if your judge be Page."—POPE.

assizes, and so the fellow was had up, and Frank was had up as a witness. To be sure I shall never forget the face of the judge when he began to ask him what he had to say against the prisoner. He made poor Frank tremble and shake in his shoes. 'Well, you fellow,' says my lord, 'what have you to say? Don't stand humming and hawing, but speak out.' But, however, he soon turned altogether as civil to Frank, and began to thunder at the fellow; and when he asked him if he had anything to say for himself, the fellow said he 'had found the horse.' 'Ay,' answered the judge, 'thou art a lucky fellow. I have travelled the circuit these forty years, and never found a horse in my life. But I'll tell thee what, friend, thou wast more lucky than thou didst know of; for thou didst not only find a horse, but a halter too, I promise thee.'

'To be sure I shall never forget the words, upon which everybody fell a laughing, as how could they help it? Nay, and twenty other jests he made which I can't remember now. There was something about his skill in horseflesh which made all the folks laugh. To be certain, the judge must have been a very brave man, as well as a man of much learning. *It is, indeed, charming sport to hear trials upon life and death.* One thing, I own, I thought it a little hard that the prisoner's counsel was not suffered to speak for him, though he desired only to be heard one very short word. But my lord would not hearken to him; though he suffered Counsellor —— to talk against him for above half an hour. I thought it hard, I own, that there should be so many of them—my lord, and the court, and the jury, and the counsellors, and the witnesses—all upon one poor man, and he, too, in chains.'*

Again, in 1765, Sir William Blackstone, speaking of the prohibition of full counsel in felonies, says:—'This rule seems to be not at all of a piece with the rest of the humane treatment of prisoners by the English law; for upon what face of reason can that assistance be denied to save the life of a man which is yet allowed him in prosecutions for every petty trespass?'+

The tone of Blackstone's work is that of praise where eulogy is possible, and of apology where it is impossible. Now

* *Tom Jones*, vol. vi., pp. 463-4. London, 1784.

† *Commentaries*, vol. iv., p. 355.

and then, however, he speaks out in bold condemnation. His contemporaries accepted his eulogy of our law with applause; yet his censures produced but little effect, scattered as they are over his pages at distant intervals. His seductive optimism long survived. It became the creed of the student, and none of the young men of my time escaped its influence.

A firm belief in the surpassing excellence of English law connected itself with even a stronger faith in the perfection of its administration, especially in our criminal courts; and if I may judge of others by myself, as I believe I may, nothing so jarred upon the ear of the young lawyer as a suggestion that the life of an innocent prisoner was not perfectly safe under the guardianship of our juries. I was in the first year of my studentship when the memorable case of Eliza Fenning came under public discussion; and as it bears directly on the evil of the disability of the prisoner's counsel to address the jury, and is also a case of great interest in itself, I hope I shall be pardoned for giving a succinct account of it to my readers.

Eliza Fenning was a young domestic servant in the family of a Mr. Turner, law stationer, in Chancery-lane. In the year 1815, she was convicted and executed on a charge of having attempted to poison four persons of her master's family by means of arsenic introduced into yeast dumplings, of which the prisoner herself ate. In each case, including that of the prisoner, severe sickness was caused by the food; but no death followed.

The proof given at the trial of the presence of arsenic was of the most unsatisfactory kind. Indications were relied upon which are well known to be utterly fallacious. The dumplings were said not to rise when placed before the fire in the state of dough. But it has been proved, by frequent experiment, that no such effect can be produced by arsenic except when existing in such large proportion as would have inevitably caused the death of each of the five persons who partook of the food. But what is more to the purpose, as affecting the conduct of the case, is that the medical witness who stated this fact to be an indication of the presence of arsenic, was never asked if he had tried the experiment. Again, the knives used at dinner were found in a blackened state; but, as before, the medical witness who spoke to that circumstance as being an indication that they had come into contact with arsenic, appears never to have

verified his opinion by experiment; and it is now well known that arsenic would produce no discoloration.*

The only remaining fact as to arsenic, was that a white powder had been obtained by washing the tin pan in which the prisoner had made the dumplings. It does not appear that any test was applied to ascertain what this powder really was, beyond washing it again with water.

If to this testimony be added the general assertion of the medical witness, that the symptoms attending the sickness convinced him the patients were suffering from the effects of arsenic, we have the whole evidence given to prove the *corpus delicti*, or in other words, the whole evidence to show that a crime was committed.

At the Old Bailey, the Corporation of London, much to their credit, employ a short-hand writer to take down the evidence *verbatim*, in the form of question and answer, so that we know

* BRISTOL LABORATORY,
July 27th, 1854.

SIR,—In reply to the question you put to me a few days ago, I may observe that, from the results of some experiments which your son, Mr. Berkeley Hill, has made at my request in this laboratory, it appears that when arsenious acid (white arsenic) is added in small quantity to the flour employed in the preparation of yeast dumplings, the latter cannot be distinguished in appearance from those made in the ordinary way with pure flour and yeast.

No difference, indeed, can be perceived even when a fourth part by weight of arsenious acid is added to the flour. When, however, the latter is mixed with an equal quantity of arsenic, the dumplings become what is commonly termed 'heavy,'—that is to say, though the dough rises well in the oven, on boiling, the vesicles disappear, and the mass becomes, comparatively speaking, dense and tenacious.

In conclusion, I should state that arsenious acid does not seem to possess the property of tarnishing steel. At all events, the knives that we employed in cutting up the arsenicated dumplings before alluded to, were not more discoloured than those used with the dumplings prepared in the ordinary manner, and without arsenic.

I remain, Sir, yours respectfully,

MR. COMMISSIONER HILL, &c. &c.

THORNTON J. HERAPATH.

UNIVERSITY HALL, Gordon Square,
London, May 2nd, 1855.

DEAR FATHER,—Mr. Thornton Herapath and I having last year read the medical evidence given on the trial of Eliza Fenning, made the experiments which are described in his letter to you.

To what he says, I may add that if we had found the effect upon the knife to be that of blackening it, such a consequence would have afforded no proof that the discoloration had been produced by arsenic, steel knives being blackened by coming in contact with many substances which enter into human food, as vinegar, mustard, &c.

Dear Father, yours affectionately,

M. D. HILL, Esq., Q.C., &c.

BERKELEY HILL.

exactly what was said by the witnesses ; and as the evidence of Mr. Marshall, the medical witness, is very short, I will transcribe it word for word.

‘ Mr. John Marshall sworn :—I am a surgeon. On the evening of Tuesday, the 21st of March, I was sent for to Mr. Turner’s family. I got there about a quarter before nine o’clock. All the symptoms attending the family were produced by arsenic. I have no doubt of it, by the symptoms. The prisoner was also ill, by the same I have no doubt.

Q. ‘ Did Mr. Orlibar Turner show you a dish the next morning ?

A. ‘ He did. I examined it. I washed it with a tea-kettle of warm water. I first stirred it, and let it subside. I decanted it off. I found half a tea-spoonful of white powder. I washed it the second time. I decidedly found it to be arsenic.

Q. ‘ Will arsenic, cut with a knife, produce the appearance of blackness upon the knife ?

A. ‘ I have no doubt of it.’

Q. ‘ Did you examine the remains of the yeast ?

A. ‘ Yes, there was not a grain of arsenic there ; and I examined the flour-tub, there was no arsenic there.’*

Such was the proof on which a jury was all but *directed* to find that the crime of poisoning had been committed.

With regard to the alleged motive, it was of the slightest kind.

Some weeks before the act the mistress had reprimanded the prisoner for an impropriety, and had also given her warning to quit the service, which warning, however, had been withdrawn on the prisoner expressing contrition.

It was not surmised that either of the other sufferers had given the prisoner any offence.

When against this hypothesis of permanent malice prompting a crime of such enormity, is placed the fact that the prisoner was herself one of the sufferers, it seems equally difficult to account for guilt being fixed upon her, as it is to understand how the conclusion was arrived at that a crime had been committed at all.

The reader will at once perceive that the right of counsel to address the jury would in such a case have been invaluable, and could hardly have failed to prevent, what I have now for forty years believed to be, the sacrifice of an innocent life.

* *The Important Results of an Elaborate Investigation into the Mysterious Case of Elizabeth Fenning.* Hone, Fleet-street. 1815.

A Report of the trial, with much additional matter, and many shrewd observations on the case, was published by William Hone, who afterwards became celebrated in various ways.

Shortly after the execution I saw the advertisement of his work, the publication of which was postponed from time to time while the author was collecting additional matter. I made frequent inquiries for it at Mr. Hone's shop, attributing the delay to the author's failure in establishing his imputations in derogation of the verdict. At length it came forth, and never shall I forget the shock I underwent in reading that book. At this distance of time, it may be perused by the student with less pain than I had to endure, and it will enable him—(if he should believe as I do, that it is absolutely impossible such a case should occur at the present day)—to measure our intermediate progress in the administration of criminal justice.*

The public apathy to which I have adverted can hardly be more forcibly illustrated than by the fact, that it was not until the year 1824 that any attempt was made in Parliament to remove the disability of prisoners to be defended by full counsel. It ought, however, in candour to be stated, that several excellent persons were adverse to the change, in the sincere belief that the allowance of counsel to prisoners would not tend to elicit truth. Of these some objected to counsel being heard to address the jury on either side, timidly following in the steps of Bentham, who

* The following passage, although I must have read it, had passed from my memory previous to writing the foregoing notice of Fenning's case. It is, say the Editors of *Sir Samuel Romilly's Memoirs*, extracted from one of his MSS. :—

'The case of Eliza Fenning is that of a servant girl who, in the month of April, 1815, was tried at the Old Bailey, before the Recorder of London, for the crime of administering poison to her master and mistress, and her master's father, which, by an Act of Parliament, commonly called Lord Ellenborough's Act, has been made a capital felony. The only evidence to affect the prisoner was circumstantial. The poison was contained in dumplings made by her; but then she had eaten of them herself; had been as ill as any of the persons whom she was supposed to have intended to poison; and her eating of them could not be ascribed to art, or to an attempt to conceal her crime, for she had made no effort whatever to remove the strongest evidence of guilt—if guilt there was. She had left the dish unwashed; and the proof that arsenic was mixed in it was furnished by its being found in the kitchen on the following day, exactly in the state in which it had been brought from table. No motive, besides, could be discovered for an act so atrocious. Her mistress had, indeed, reproved her about three weeks before for some indiscretion of conduct, and had given her warning, but had afterwards consented to continue her in her service. This was the only provocation for murdering, not her mistress

disapproved of advocacy in any form, in either civil or criminal cases.

The general proposition is intelligible, though, as I think, most erroneous. But how a distinction could be drawn between civil and criminal cases, I was never able to apprehend; and, if there be degrees of impossibility, was I less able to apprehend how the distinction should be made to restrict the privileges of a person accused of crime: for, supposing distinction could be established, one should naturally expect it to be favourable to him whose life was at stake rather than to him whose property alone was in question.

In the year 1824, Mr. George Lamb, the brother of the late Lord Melbourne, brought the subject under the consideration of the House of Commons. He was supported by Sir James Mackintosh, Dr. Lushington, and Mr. Denman, and opposed by Attorney-General Copley, afterwards Lord Lyndhurst, and Solicitor-General Wetherall.

On the division, 50 voted for, and 80 against the motion.*

Ten years afterwards, conversing with Lord Lyndhurst, who was still opposed to the measure, he told me that his speech had converted Mr. Canning, who was previously favourable to the change.

In the year 1826 the pen of Sydney Smith was employed in the cause of the prisoner. He addressed the world through that powerful organ, *The Edinburgh Review*, and I cannot resist the temptation to insert a portion of his article:—

only, but her master also, and the father of her master. A crime of such enormity, produced by so very slight a cause, has probably never occurred in the history of human depravity.

‘The Recorder, however, appeared to have conceived a strong prejudice against the prisoner. In summing up the evidence, he made some very unjust and unfounded observations to her disadvantage, and she was convicted. The singularity of the trial attracted the notice of many persons to her case. They interested themselves in her favour. They applied to the Crown for mercy. The master of the girl was requested to sign a petition in her behalf; but, at the instance of the Recorder, he refused to sign it. An offer was made to prove that there was in the house, when the transaction took place, a person who had laboured a short time before under mental derangement, and in that state had declared his fears that he should at some time destroy himself and his family; but all this was unavailing: the sentence was executed, and the girl died, apparently under a strong sense of the truths of religion, but solemnly protesting to the last moment that she was innocent.’—*Memoirs of Sir S. Romilly*, 8vo., vol. 3, note p. 235 (edit. 1840).

* *Hansard*, New Series, vol. xi.

‘It is a most affecting moment in a court of justice, when the evidence has all been heard, and the judge asks the prisoner what he has to say in his defence. The prisoner, who has (by great exertions, perhaps, of his friends) saved up money enough to procure counsel, says to the judge, ‘that he leaves his defence to his counsel.’ We have often blushed for English humanity to hear the reply, ‘Your counsel cannot speak for you, you must speak for yourself.’ And this is the reply given to a poor girl of eighteen—to a foreigner—to a deaf man—to a stammerer—to the sick—to the feeble—to the old—to the most abject and ignorant of human beings! It is a reply, we must say, at which common sense and common feeling revolt; for it is full of brutal cruelty, and of base inattention of those who make laws to the happiness of those for whom laws were made. We wonder that any juryman can convict under such a shocking violation of all natural justice. The iron age of Clovis and Clotaire can produce no more atrocious violation of every good feeling and every good principle. Can a sick man find strength and nerves to speak before a large assembly? Can an ignorant man find words? Can a low man find confidence? Is not he afraid of becoming an object of ridicule? Can he believe that his expressions will be understood? How often have we seen a poor wretch, struggling against the agonies of his spirit, and the rudeness of his conceptions, and his awe of better dressed men and better taught men, and the shame which the accusation has brought upon his head, and the sight of his parents and children gazing at him in the court, for the last time, perhaps, and after a long absence. The mariner sinking in the wave does not want a helping hand more than does this poor wretch. But help is denied to all! Age cannot have it, nor ignorance, nor the modesty of women! One hard uncharitable rule silences the defenders of the wretched in the worst of human evils; and at the bitterest of human moments mercy is blotted out from the ways of men!’*

In the same year Mr. George Lamb made a second attempt. He was supported by Mr. Horace Twiss in an admirable speech; by Mr. John Williams, afterwards the judge; by Mr. Brougham, Mr. Denman, Mr. Scarlett, and Lord Althorpe; but was

* *Edinburgh Review* (1826), vol. xiv., p. 5.

opposed by Attorney-General Copley ; by Mr. Peel, afterwards Sir Robert Peel ; Mr. Tyndal, Solicitor-General Wetherall, and Mr. Canning. On that occasion the ayes were 36, while the noes were 105,* so that instead of making progress, the question would seem to have lost ground. Nothing further was done in Parliament until 1834, when the Prisoner's Counsel Bill, introduced by Mr. Ewart, passed the House of Commons, but did not find its way through the House of Lords. The debate was taken on the motion of Mr. Ewart for the second reading of the bill, a motion which I had the honour to second. It was supported by Mr. Pollock, now Chief Baron, Lord Althorpe, and Mr. O'Connell ; and opposed by Serjeant Spankie ; but it passed without a division.†

In 1835, Mr. Ewart was again at his post ; but having been intermediately deprived of my seat, I lost the privilege of assisting him. On moving to commit the bill, he was supported by Attorney-General Campbell, Mr. Blackburne, Mr. Charles Buller, Mr. O'Connell, Dr. Lushington, and Mr. Serjeant Talfourd ; and was opposed by Mr. Poulter and Mr. Serjeant Goulburn.‡ On the third reading there was a second debate. Sir George Strickland and Mr. Charles Buller supporting the motion, and Sir Eardley Wilmot and Mr. Poulter opposing it. The ayes were 43, noes, 36.§

In the year 1836 Mr. Ewart again persevered. The second reading was supported by Mr. Ewart, Mr. O'Connell, Mr. Pollock, Dr. Lushington, and Attorney-General Campbell, and was opposed by Sir Eardley Wilmot, the Chairman of the Warwickshire Sessions, who stated that nine-tenths of the legal profession and of the judges were adverse to the measure. It was also opposed by Serjeant Goulburn, now one of the Commissioners in Bankruptcy.

As I have mentioned the names of these two gentlemen, Sir Eardley Wilmot and Serjeant Goulburn, let me pause a moment that I may bear witness to their kindness of heart. Sir Eardley Wilmot was one of the earliest advocates for the reformatory treatment of juvenile offenders, as his published works will prove. He was one of the founders of the Asylum at Stretton-on-Dunsmoor, and a steady and active supporter of

* *Hansard*, New Series, vol. xv.

† *Hansard*, Third Series, vol. xxviii.

‡ *Ibid.*, Third Series, vol. xxiv.

§ *Ibid.*, vol. xxix.

the institution until his death. Serjeant Goulburn's friendship I have enjoyed for more than thirty years; and I look back with much pleasure on many acts of kindness to myself and others, which testify most conclusively to his amiable disposition.

For the second reading the ayes were 179, the noes 35. When the Bill went up to the House of Lords, it was twice debated. On the first occasion Lord Lyndhurst gave a history of the Bill, and of the change in his own opinion, which it will be interesting to read. 'In the year 1834,' he said, 'a Bill, similar to this in principle, passed the House of Commons. It came up to your lordships, it was read a first time, and no further proceedings took place upon it. In the last year the Bill was again renewed. It passed the other House of Parliament without a division, came up to your lordships, and was referred to a select committee. But these proceedings took place so late in the Session it was impossible that that committee could make a satisfactory report. Nothing further, therefore, could be done beyond printing the evidence. At the commencement of this Session of Parliament, the present Bill, founded on the principle of the former, was again introduced into the other House of Parliament. It was in consequence, I presume, of the proceedings which I have detailed, that it was referred to a select committee, which reported in favour of it, and it passed to your lordships' house by a great majority. That Bill is now upon your table for consideration and discussion. His Majesty's Secretary of State for the Home Department directed the Commission, which had been appointed to investigate the state of the criminal law of this country, to turn their attention to this subject. That Commission have accordingly done so; they have investigated the subject fully, and they have examined witnesses the most qualified to throw light upon it. They have made a most elaborate and learned report upon this subject; and they unanimously recommend that the principle of this Bill should be adopted. It is under these circumstances, and with this sanction, that the measure is now submitted to your lordships' consideration.

'But the case does not rest here—the current of ancient authority sets still more strongly in my favour. I have to cite the opinions of Whitelock, who had been one of the Commissioners of the Great Seal, and of Judge Jeffreys, as being

in favour of the principle of this Bill. I find that there stands opposed to me the name of the respected and venerable Sir Michael Foster; but he does not express himself very strongly upon the subject. He says: 'I am far from disputing the propriety of this rule (that of refusing counsel to address juries for the prisoner in cases of felony); in all these cases we must be guided by a balance of evils and inconveniences.'

'My Lords, I admit the authority, and even the doubts of that learned judge to be entitled to great attention; and it was in consequence partly of these doubts that, after examining what might, in my mind, be the evils likely to arise from a change of system, I, on a former occasion, opposed a measure of this description when introduced into the other House. But, my Lords, I have since had reason to observe the progress of public opinion on the subject: I made inquiries respecting it while at the Bar. I have, when on the Bench, watched its progress, and seen the working of the system; and the result has been, to produce a conviction in my mind that the evils and inconveniences of allowing counsel to prisoners have been greatly exaggerated, and ought not to be put for a moment in competition with that which the obvious justice of the case so clearly demands.'*

The measure in the House of Lords was twice debated this year, but on neither occasion did the house divide. It was supported by Lord Wynford (formerly Chief Justice of the Common Pleas), Lord Denman, Lord Abinger, and Lord Cottenham, then Lord Chancellor, Lord Plunket, Lord Radnor, and the Duke of Richmond; and was opposed by the Lords Wharncliffe, a Chairman of Sessions, and Lord Devon.

In that same year the Bill received the royal assent, since which time I am not aware that a single voice has been raised against it. We may smile now at the exaggerated apprehensions which were entertained as to its practical consequences. It was thought the eloquence of counsel on the one side or on the other would so warp the verdicts of juries as to produce a failure of justice. Great fears were also expressed as to the effect of the measure in lengthening trials, and a total disarrangement was anticipated in the administration of criminal

* *Mirror of Parliament.* Barrow, 1836. Vol. iii., p. 2011.

law. Experience, however, has shown that cross-examinations have been so much shortened by relieving the advocate from the necessity to which he was before driven of addressing the jury in a circuitous and indirect manner, through the medium of argumentative questions to the witnesses, that it is very doubtful if, on the whole, trials are longer than they were before the change.

The anticipations of practical mischief from the working of the measure entertained by men of large experience in criminal courts, as contrasted with its utter harmlessness with regard to inconvenience, and its great benefit in the aid which it affords in eliciting the truth, furnish a warning against our permitting our minds to be drawn away from the advancement of sound principles by alarms as to difficulties of detail.

Mr. Charles Phillips, a witness of deserved weight and authority, when examined before the Committee of the House of Lords of 1835, used this remarkable expression: 'All theory is in favour of the change; all practice against it.'

My experience through life has been, that if a sound theory be honestly reduced to practice, fewer difficulties will arise than the fear of innovation would lead us to expect; and that when such difficulties do present themselves, surrounding circumstances will suggest the means for overcoming or avoiding them.

Such is the history of the Prisoner's Counsel Bill. The narrative by no means supports that belief in their superiority which Englishmen are wont to entertain, especially when it is remembered that long before 1836 every accused person tried in any other part of the world except in England, Wales, or Ireland, was placed under no restriction as to advocacy. Even our own colonies, both those which remained to us and those which had won their independence, had long remedied this monstrous defect of English law.

Assuredly, neither as regards the rules of evidence, nor as to aiding the prisoner in his defence, is there anything to show that a spirit of mercy or of justice presided over our criminal courts: yet, in the institution of juries, and in the usage of open trial, it cannot be denied that we possessed advantages overbalancing even the enormous evils which have been laid before the reader.

Comparison of Number of Crimes committed with Convictions.*

Years.	1 Number of Forged Notes presented at the Bank of England.	2 Number of Persons Convicted of Forging and uttering Forged Notes.	3 Proportion of Convictions to Offences.	4 Number of Persons Executed for Forgery	5 Proportion of Executions to Crimes com- mitted.
1805	3,784	24	One in 158	13	One in 291
1806	4,160	9	462	11	378
1807	5,829	40	146	13	394
1808	4,938	32	154	5	987
1809	6,622	52	127	19	348
1810	5,449	26	210	18	303
1811	8,797	24	366	8	1,099
1812	17,885	52	344	23	777
1813	15,315	52	295	17	901
1814	14,722	44	334	6	2,453
1815	17,765	59	301	11	1,615
1816	24,849	104	9	18	1,380
1817	31,180	128	243	18	1,732
1818	27,209	227	120	24	1,133
1819	23,035	193	119	14	1,645
1820	29,035	352	82	21	1,382
1821	18,126	134	135	16	1,133
1822	3,642	16	227	6	607
1823	1,648	6	275	2	824
Total . .	263,990†	1,574	One in 167	263	One in 1,003
1824	965	5	193	1	965
1825	770	2	385	—	Nil
1826	2,038	22	93	—	"
1827	2,038	24	87	2	1,019
1828	1,170	10	117	2	585
1829	1,117	14	80	1	1,117
1830	613	1	613	—	Nil
1831	364	3	121	—	"
1832	424	4	106	—	"
1833	447	13	52	—	Capital
1834	262	1	262	—	punishment
1835	279	1	279	—	abolished.
1836	223	Nil	Nil	—	
1837	267	3	89	—	
Average	10,977	103	One in 106	6	One in 1,583

Note.—On the first division of the above table (1805—1823), the numbers executed are those for forgeries of every description; the returns not distinguishing separately the executions for forging and uttering forged bank-notes. In the latter division (1824—1837), the numbers executed are of those who were convicted of the offences in the second column, while they continued capital.

* *First Report of the Commissioners appointed to inquire as to the best means of establishing an efficient Constabulary Force in the Counties of England and Wales, 1839.*

† It appears from a return laid before Parliament in May, 1818 (Paper No. 296), and also from one moved for in June, 1821 (No. 673), that of 200,995 forged notes presented for payment during the years 1812 to 1820 inclusive, 173,241 were notes for one pound, 19,367 for two pounds, 7,628 for five pounds, 544 for ten pounds, 2 for fifteen pounds, 116 for twenty pounds, and 35 for sums above twenty pounds.

By reference to the foregoing table it will be seen that there have been no executions for forgery since the year 1829, although capital punishment for that offence was not abolished until the year 1833. At first, the proportion of convictions to offences does not appear to have greatly changed; but now that the state of the law is well understood both by prosecutors and witnesses, it would appear that such proportion has been wonderfully raised.

The following table I owe to the kindness of Mr. Richard Mullens, the solicitor to the Association of London Bankers.

Experience of the London Bankers' Association in Cases of Forgery, and the Prosecutions and Convictions thereon, during 18 years (1836—1853).

Date.	Number of Subscribers.	Cases of Forgery	Paid.	Stopped.	Number of Prosecutions.	Convictions.
1836	29	12	6	6	5	5
37	29	14	13	1	2	2
38	23	16	10	6	4	4
39	24	12	9	3	3	3
1840	24	19	14	5	5	4
41	23	18	15	3	4	3
42	23	14	11	3	4	4
43	29	21	18	3	6	6
44	26	15	12	3	5	5
45	26	30	20	10	8	8
46	26	23	20	3	5	5
47	25	25	14	11	7	7
48	25	27	20	7	7	7
49	27	14	7	7	12	11
1850	27	21	14	7	8	8
51	24	16	9	7	5	5
52	23	20	10	10	7	7
1853	24	21	9	12	8	8
Totals . . .		338	231	107	105	102

From this table it appears that the total number of forgeries on the bankers who subscribed to this institution was 338, and that the number of convictions was 102, so that nearly one-third of the offenders were detected and prosecuted to conviction. It also appears that the indisposition to convict, which was so strong during the later years of capital punishment, is at an end, as there were only three acquittals in 105 prosecutions. The following questions to Mr. Mullens, with their answers, will throw some additional light on the subject:—

QUESTIONS.

1. The number of bankers in the United Kingdom?

2. Number of subscribers?

3. Do forgeries upon subscribers comprise a very large proportion of forgeries on all the bankers in the Kingdom?

4. What are the instruments usually forged—cheques, bills of exchange, or bank notes?

5. Does the circulation of provincial notes increase the number of forgeries in the country?

6. Has the disuse of £1 notes anything to do with the result, or is it attributable to any other change in commercial transactions?

7. Is there increased vigi-

ANSWERS.

1. The number of bankers in the United Kingdom is 630 (this includes London bankers, viz., 76).

2. The subscribers do not include all the London bankers. The number varies annually from 24 to 29. The Association does not include any country banks.

3. As the Association includes the principal city bankers, there is no doubt that the forgeries on the subscribers comprise a very large proportion of the forgeries committed in the metropolis; but it will be difficult to estimate from them the forgeries in the whole kingdom.

No. of City bankers . . . 54

No. of City subscribers . . . 26

4. Cheques and acceptances to bills of exchange.

5. Hardly so. The forgery of country bank-notes is very rare; a few cases have occasionally occurred, but they are very few. The 'Country Bankers' Association for the Prosecution of Forgeries' is discontinued.

6. The disuse of £1 notes has doubtless tended to diminish the forgeries of notes; but that offence is of comparatively rare occurrence now.

7. The increased vigilance of

lance in the police, so as to make the offence more dangerous by reason of the greater probability of detection?

8. Has the abolition of the punishment of death produced the expected effect of rendering injured parties more willing to prosecute, witnesses to give evidence, and juries to convict?

the police has assisted greatly in the detection of actual forgers. But I doubt whether the probability of detection has any influence whatever in the repression of this offence.

8. Certainly; there is now scarcely any difficulty whatever in obtaining the proper evidence.

The preceding papers having been submitted to the Messrs. Freshfield, solicitors to the Bank of England, they were so good as to write me the following letter:—

5, NEW BANK BUILDINGS,
London, 28th September, 1854.

DEAR SIR,—We have no record of the convictions of persons prosecuted by the Bank for uttering forged bank-notes; but there is no doubt that the proportion of convictions is greater under the new than the old law, and we should think that the convictions had of late years amounted to 9 in 10 of the number of cases tried.

We attribute the increase in the rate of convictions, in a great degree, to the causes mentioned by you,* to which you may add the stronger disposition towards conviction evidenced by the judges, in the case of offences in which the punishment does not affect life.

We are, dear Sir, your faithful servants,

M. D. HILL, Esq., &c. &c.

J. C. & H. FRESHFIELD.

The information furnished by Mr. Mullens and the Messrs. Freshfield shows, doubtless, a greater approach towards certainty of punishment following upon crime than has been hitherto found to exist. It must, however, be remembered that forgery, or rather the utterance of forged instruments, is an offence peculiarly hazardous to the criminal; and it would be therefore rash to argue from the improvement to which attention has been drawn, that the proportions between other crimes and their convictions have been changed in any degree approaching to that which applies to forgeries.

It is probable, however, that some amendment has taken place; yet my hopes are still very slight that, without many

* Absence of reluctance in prosecutors, witnesses, and juries.

changes, to which I cannot stop even to advert, we shall ever see detection and punishment dogging the steps of crime with the promptitude and certainty which alone can give to deterrent punishment the efficiency which has been so long and so vainly attributed to its influence; and I have often had occasion to remark how rare it is to find any person who has had experience of criminals attach weight to deterrents.

Mr. Mullens, it will be observed, thinks that the augmented number of detections and convictions has but a limited effect upon the forger.

OBSERVATIONS

Arising out of the Charge delivered in May, 1840.

THE UTTERING OF COUNTERFEIT COIN.

THE circumstances now incidental to the offence of putting counterfeit money into circulation, are so different from those of 1840, that it would only encumber this volume to reprint a Charge of this remote date.

I have had occasion to observe for many years, and always with great concern, how carefully the criminal watches the inventor, and with what promptitude he avails himself of every new facility for the exercise of his calling afforded by the progress of science or of art. But the coiner stands at the head of his nefarious class, in thus turning the best means to the worst ends. To fabricate a coin bearing a sufficiently close resemblance to the genuine issue from the Mint, it was formerly necessary for the coiner to have command of dies and machinery for working them. The die is a mould wrought, or sunk as it is termed, in a block of steel, a pair of dies being required for each class of coins; crowns, half-crowns, shillings, &c. The die-sinker, however, a skilled workman, was not readily persuaded to prostitute his talents to a purpose so vile, exposing him, also, to consequences highly penal. Dies, which to the honest manufacturer are very expensive implements, were costly indeed to the coiner. Again, the machinery by which the dies

were made to operate upon the metal required a fitting place for its erection ; and much care was necessary to prevent discovery through the noise or concussion which accompanied the employment of so much force as is requisite to raise, in due relief, figures and inscriptions displayed on the faces of the coin. The manufacture of base money was, therefore, an expensive and hazardous trade. But now, since the invention of the beautiful process called electro-type, both cost and danger are most perniciously diminished. The coiner takes a genuine piece of money, by the aid of which he constructs a pair of moulds in plaster of Paris. He then makes a compound of certain white metals, fusing at a low temperature, for which a common fire suffices. These he may melt in a spoon, and so fill his moulds, repeating the operation according to the number of coins which he desires to produce. The compound is principally of tin, together with a small portion of zinc. To these a little regulus is added, composed of iron, tin, and antimony. The object of this addition is to give hardness to the coin, whereby it emits, when rung, the sharp sound of silver.

The coin is now to receive a thin coating of real silver, which is deposited upon the surfaces of the base metal by the aid of a rudely-constructed galvanic battery. The manufacture is now completed. The whole apparatus the criminal may carry from place to place in a handkerchief, or even in the crown of his hat ; and, if he can obtain the command of a garret for a few hours, he may provide himself, at scarcely any cost, with the means of imposing his trash on the shopkeeper and the publican as genuine coin of the realm. The victims of these frauds are usually the humbler tradesmen. The utterer makes a small purchase with the intention of obtaining as great an amount of change as he can out of the false money which he offers in payment ; and thus, even if he should throw away the article bought, he is amply recompensed by the good money which he receives in lieu of the valueless tokens given in return.

In the cases brought before me, the utterer has generally succeeded both in effecting a purchase and in leaving the place without exciting suspicion. His detection is most frequently the consequence of his venturing to resort a second time to the same shop, before he has given himself any reasonable chance

of being forgotten, although the interval has been quite sufficient to afford occasion for examining his base coin.

To persons unacquainted with the habits of criminals, this recklessness will appear scarcely credible, the rather as a disposition exists in the public mind to associate ideas of ability, (or, at the least, of so much cleverness as may be implied in the possession of great cunning,) with the criminal class. But without intending to deny that it contains individuals of considerable talents, who, in addition to their talents, must be capable of exercising much prudence and caution, or they would not enjoy the long impunity which some of them can boast, yet criminals, taken as a body, are far below the average of every honest class, both in natural and acquired endowments. Their inferiority is so obvious on the mere view of any considerable number of them collected together, as quickly to dispel all prejudice in favour of their powers, mental or physical.

Phrenologists, as my readers are doubtless aware, have not seldom affirmed the capacity of their science to direct the special treatment suitable to the differing requirements of each prisoner. But whether it be that no sufficient opportunity of trying experiments on prisoners has been afforded to them, or whether it be that their science in its present state can give us no practical directions of much value, I am not aware that they have established any principles, drawn strictly from their own resources, upon which the officers entrusted with the control of criminals would do right in acting, until they were fortified in each case by indications on which reliance had been placed before phrenology had ever been heard of.

That enough has been done by phrenologists to justify their being allowed to make further experiments on the treatment of criminals, I am not prepared either to affirm or deny; but, assuredly, nothing has yet been satisfactorily established and added to the common store of working knowledge which entitles physiologists to assume quite such high ground as they have taken with regard to criminal legislation and prison discipline. These remarks have been called forth by a certificate attached to a work on this subject by Mr. George Combe;* a document which informs us, that 'criminal legislation and prison

* *The Principles of Criminal Legislation and the Practice of Prison Discipline Investigated.* By George Combe. London: 1854.

discipline will never attain to a scientific, consistent, practical, and efficient character, until they become based on physiology, and especially on the physiology of the brain and nervous system.'

This position is laid down for our government by seven most eminent physiologists, Sir Benjamin Brodie, Sir James Clark, Sir Henry Holland, Professor Owen, Sir John Forbes, Dr. Conolly, and Dr. William Carpenter—names worthy of profound respect, most deservedly enjoying the highest reputation, and upon whose opinions on all matters within the ample boundaries of their own wonderful science, I, for one, should always repose unhesitating and implicit confidence. But, says the *Digest*, 'Extra territorium jus dicenti impunè non paretur.' And truly, if we seek to turn the principle here enunciated with oracular authority to profit, we meet with the disappointment which has in all ages followed attempts to extract from the inspirations of the Tripod a lesson for the guidance of human action. It might be supposed, at first sight, that the certificate vouches the soundness of Mr. Combe's theory, which is derived from phrenology, as taught by the fathers of that fashionable study. But when it is read with attention, we find that the certifiers are not to be understood 'to become answerable for the accuracy of all the facts, or the soundness of all the reasonings;' which highly prudent saving clause, inasmuch as no distinction is drawn between one fact and another, or one piece of reasoning and another, relieves the subscribers from the danger of warranting any one fact or any one argument in the whole book. Indeed, looking carefully to the frame of that very curious instrument, it will be found to bind them to no other position than this :—That physiology *ought* to furnish the basis of laws against crime, and of rules for the discipline of criminals. Now, the gentlemen who have thus given to Mr. Combe the benefit of their names, are either acquainted with the secret of extracting from physiology truths which will guide us through our difficulties in legislating against crime, and in discovering right methods for the treatment of the criminal, or they are not. If they have made this invaluable discovery, why withhold it? If they have not made it, on what grounds do they base their dogma, that physiology is able to redeem the pledge which they have made in its behalf? Surely they were bound to sustain, by some evidence, a thesis promulgated with such an overwhelming

force of assertion. For, even if the proposition of the learned subscribers shall, in the fulness of time, be demonstrated, yet, until the proof is given, and the practical deductions which are to flow from it, are brought before our eyes, we can only regard it as a barren *dictum*, and must think that it might as well have remained *in retentis* until its authors had qualified themselves to lead us at once to definite results. To say to us, 'be ye fed—be ye clothed,' without offering either food or raiment, is a proceeding condemned by the highest authority.

Turning to the book itself, we find it contains much useful matter regarding the treatment of criminals, which may be read with great advantage by students who are not acquainted with the non-phrenological authors to whom Mr. Combe is indebted for his information; but I am not aware that he has himself added much if anything to our stock of available knowledge. The most that Mr. Combe can ask on behalf of his own department, so far as he has enabled us to judge of its pretensions, is, that phrenology harmonizes with the principles which have been arrived at by moral reasoning and common observation on the capabilities and defects of criminals, and on the treatment arising out of these characteristics. To the adepts in phrenology this must be a gratification, as confirming their belief in the soundness of their favourite science. But for the aid which phrenology thus receives, I am not aware that as yet it has made any commensurate return. Of its future I do not presume to form an opinion. Let it establish its pretensions by ascertained facts and sound arguments, and I will follow its leading in all humility; until then I must remain a disciple of those who have furnished us with such knowledge on the subject as we possess, and I shall think it right to pursue their track.

The relations between moral action and physiology are, for the present, nearly as obscure as those between that science and the vital forces, of which Mr. Joseph Hodgson, himself an eminent physiologist, speaks thus:—'All speculations respecting the intimate nature of the nervous force, though many of them have proceeded from the greatest philosophers who have ever lived, prove only that hitherto the endeavour to comprehend its nature is vain and fruitless. Many anatomical truths have been discovered, and some physiological facts have been observed, but

no principle by which the nature of this power can be explained. All the trains of research to which this inquiry has been subjected have begun in exact examinations of organization and function, and have ended in conjecture and hypothesis. As it has been eloquently observed by a learned author, 'the stream of knowledge in all such cases is clear and lively at its outset; but, instead of reaching the great ocean of the general truths of science, it is gradually spread abroad among sands and deserts, till its course can be traced no longer.'*—*Hunterian Oration for 1855*, p. 12.

* Whewell, *History of the Inductive Sciences*, vol. iii. p. 451.

CHARGE OF APRIL, 1841.

THE charge at these Sessions contained, among other matter, a short account of the Recorder's visit to the Warwickshire Asylum for Convicted Boys at Stretton-on-Dunsmoor.

* * * This county, I am happy to say, is honourably distinguished—distinguished, I believe, above all others in the country—by an establishment which has hardly yet gained its fair share of attention. I mean the asylum for the reception of boys convicted of felonies.

It was begun in the year 1818, by some of the benevolent gentlemen of the county, engaged as magistrates in the administration of justice, and though upon a small scale, so that the good wrought by it is necessarily very limited, it has had considerable success, and it has shown that much may be effected by such means: and probably this result of the experiment is even of more value than the actual benefit conferred on the persons brought under its operation, notwithstanding the importance of that benefit to the individuals who have been its recipients. I have thought it my duty, as the Recorder of this borough, myself to visit the institution, and to judge, as far as I am able, from personal observation, of the success of the experiment. Accordingly, I went last week to Stretton-on-Dunsmoor, where it is situated.

It is, gentlemen, no fine edifice—there is no grand portico to astonish the traveller as he passes along—it is simply a farmhouse, and one of rather an humble description. In this farmhouse, to which some buildings are attached, by way of workshops, about twenty boys reside, under the care of a master, Mr. Johnson, who, from his appearance, might be supposed to be a farmer. He is a man of great intelligence, and admirably fitted by nature and experience for the office he has undertaken. I found that he and his wife treated the boys under their charge almost as members of their own family. These poor lads, therefore, have the advantage—enjoyed, perhaps, by them for the first time in their lives—of witnessing in the arrangements of

a domestic establishment the prevalence of order, the comforts and the virtues of a home.

I saw some of the inmates engaged in learning the business of a tailor ; some that of a shoemaker ; to one or other of which trades all the boys apply themselves, besides cultivating the large garden attached to the house. I examined their work, and, judging from the small experience I have in such matters, I thought it done well. Of course the articles in tailoring and shoemaking were of the humblest kind, but all seemed to be well executed. The countenances and general appearance of the lads gave me much satisfaction. While they were respectful in their behaviour, there was nothing of fear or servility about them, and they looked healthy and cheerful.

I also examined their lodging and table, and here I found everything wholesome, without anything like luxury, which would be improper. The master showed me his little library, to which the boys have constant access; where I was pleased to find, not only works on religion and morality, which are indispensable, but others of an entertaining description ; in fact, the selection appeared to be well suited for engaging the attention of those who, perhaps, up to this period, had had no opportunity or motive for reading at all. Another part of the system that pleased me very much was the absence of all attempt at imprisonment, of all physical obstacle to the boys departing at any moment ; and the infrequency of desertion is a proof not only of the excellence of the principle adopted, but of the success of its application. There are instances, it is true, in which boys, on being first brought to the asylum, do run away ; but in all cases in which they can be induced to stay a sufficient length of time for the system to take its hold upon their minds, desertions are unknown ; and I am happy to say that of the boys who have been sent away from courts of justice in this county, under the heavy calamity of loss of character, and the consequent loss of the means of honest maintenance, many, after a residence in this institution, have been restored to their friends and society ; and some have risen by praiseworthy exertions to the position of master tradesmen—a station in which they are now exercising their abilities for the benefit, instead of for the injury, of the community. Gentlemen, I have already mentioned to you that this institution has hardly gained the

attention it deserves, owing, perhaps, to one, and not the least, of its excellences, namely, that it is unobtrusive in its character and mode of operation, and that it makes no appeal by any species of empiricism to public notice.

I found that the number of boys at Stretton-on-Dunsmoor sent from Birmingham was greater than the number coming from the whole body of the county besides. That is a circumstance reasonably to be expected; but I also found that the contributions to this establishment are in an inverse order, and that of these the greater part come from the county, and not from Birmingham. The master made my visit known to the committee, and they directed their secretary to inform me of a resolution which they had passed, and which was in these words:—‘It was shown that the income of the institution was not sufficient to meet its expenses, and that it would be necessary to make a reduction in the expenditure. It was further shown that the number of boys sent from Birmingham, from the establishment of the Asylum, had amounted to 248, while the number sent from the rest of the county did not exceed 44; and that, on the other hand, the amount of subscriptions per annum from Birmingham was only 23*l.* 2*s.*, while the rest of the county contributed 217*l.* 16*s.*’ In mentioning these facts, Gentlemen, I venture to state—and I speak from long experience of the inhabitants of this town, and from an intimate knowledge of their active benevolence—that it is matter of accident that the support we render to the institution is in an inverse ratio to the charge we cast upon it, and that it is by no means to be attributed to other causes. Gentlemen, when I became acquainted with the fact, I formed the intention which I have now carried into effect, of laying the circumstances before you, in the hope that something may be done—in which I need hardly say I shall be happy to take my share—to prevent, if possible, a longer continuance of this state of things. I am quite sure we all feel that, connected as the Asylum at Stretton is with our town, in which, from the circumstance of the raw material of our manufactures being metals (and not unfrequently the precious metals), the temptations to young persons are often overwhelming, it would be deeply to be deplored if an establishment so valuable should fall to the ground for want of our support.

A succinct history of this reformatory school, from its commencement in 1818 until its close in 1854, will be found in the following letter, which the author has kindly revised for this work :—

‘ Sir J. E. EARDLEY WILMOT, Bart., to the Editor of the
Daily News.

‘ *Nemo repenti fuit turpissimus.*

‘ Sir,—In my former letter on the subject of reformatory institutions I pointed out to you that the principles now becoming universally recognised as to the necessity—religious, social, and economical—of endeavouring to reclaim youthful delinquents were adopted and carried out by the magistrates of Warwickshire, at their county asylum at Stretton, as far back as the year 1818. Although a combination of unfortunate circumstances caused the dissolution of that institution in March, 1854, after a useful existence of thirty-six years, yet I felt that amid the vivid descriptions of more modern, and perhaps more flourishing, reformatories, sufficient credit had not been given to the unostentatious work of charity which conferred so much honour on the county that gave it birth. But as facts will weigh more with an enlightened public than mere words, however eulogistic, I think it will be interesting to your readers at the present moment, when this question is fast ripening for legislative discussion, to lay before you some of the statistics of the Stretton Asylum. It is only by experience of the past that future defects can be avoided, and that we can hope gradually to mature and perfect any system, although it may have had its foundation in the most benevolent enthusiasm, and even in the best and highest sensibilities of our nature. These statistics were carefully prepared by Mr. Harvey, who for ten years most faithfully and successfully discharged the duties of master, and also by the Rev. Townsend Powell, vicar of Stretton-on-Dunsmoor, who for nearly thirty years, and up to the time of his death in 1854, a little previous to the dissolution of the asylum, was its chaplain and superintendent, and, as M. Demetz is said to be of the Reformatory at Mettray, ‘its soul,’ without the smallest fee or emolument of any kind. Mr. Powell published in 1827 a memoir of the asylum, and demonstrated how much the reformation of the

youths had saved the county of Warwick in the nine years which had elapsed since its first establishment. At that period 97 boys had been admitted to Stretton, of whom 81 had been discharged; of these, 39 were ascertained to be permanently reformed, 21 were afterwards tried at Warwick, and the fate of the remaining 21 was not known: 16 remained under instruction in the asylum. The 21 who were tried cost the county 38*l.* 16*s.* 9*d.*; but it was ascertained from the records of the gaol that out of 81 boys not sent to any asylum, 38 on an average returned to prison after subsequent conviction, costing the county 716*l.* 2*s.* 6*d.* There was therefore an actual saving of 334*l.* 5*s.* 9*d.*, independently of the general saving to the country of the produce of the plunder obtained by the unreformed boys. This plunder was calculated to amount to 10*l.* per annum obtained by each boy. The average period for which a boy committed depredations from his first commitment till his transportation was two years. Looking at the experiment of reformation in another point of view, viz., in that of risk, the following was the result of Mr. Powell's calculations: Of 81 boys discharged from the asylum up to 1827, 39 were clearly ascertained to be reformed characters; 14 were afterwards transported from Warwick. There was, therefore, no risk upon these 53. The remainder on whom there was a risk, but whose fate was unknown, amounted to 28. On the other hand, of boys not sent to the asylum, but imprisoned after conviction, and thus subjected to punishment, 22 were found to be afterwards transported—none of the rest were ascertained to be reformed; the remainder, therefore, on whom there was a risk, were 59 in number. In the former case, the risk was less by 31 that the same youths would again appear at the bar, and be sent to prison or transported, thereby putting the county to expense; therefore, the asylum benefited the county by 31 times that risk, whatever its value might be.

‘At first the cost of reforming each boy, inclusive of failures, was 40*l.* per head; the cost of boarding and clothing each boy averaged 5*s.* 2*d.* per week. This expense was afterwards reduced to 4*s.* 11*d.* At Mettray, at the present time, each boy costs 7*d.* per day, or 4*s.* 1*d.* per week; but in France the price of provisions is much lower than with us. In 1842, twenty-four years after the foundation of Stretton, and when

the per centage of reformatations had risen considerably, the average cost of reformation for boys between fourteen and sixteen years of age was 25*l.*; for those below fourteen, 25*l.* 17*s.* 9*d.* The older boys, it was found, were more easily reformed, and they became more readily skilled in labour. The trades taught at Stretton were tailoring and shoemaking, and there were also six acres of land which the boys cultivated by spade labour. The advantages of agricultural labour over trades gradually showed themselves. Skill in the former was more rapidly acquired than in the latter, and consequently the former was by far the most lucrative. It was found also that the eyesight of some boys was defective, and that their physical organization ill-adapted them to sedentary employments. Mischief was more readily concocted when several boys were congregated together in one room; and in addition to this, there was something in the healthful out-of-door exercise which seemed to expand the faculties of the mind, and aided the moral influence of the teacher. At Stretton, however, this advantage was somewhat counteracted by the vicinity of a large wood to the asylum, to which boys could resort, and where they could ramble unnoticed. There was no actual physical constraint put upon the boys—the *clef des champs* spoken of at Mettray was in every one's pocket, and he could run away whenever he pleased. If, however, pursued and overtaken, he was considered to have been guilty of one of the gravest offences, and severely punished. Corporal punishment was, however, very rarely resorted to, and with extreme moderation. The mode of dealing with refractory youths was separate confinement, the deprivation of any indulgences in diet, and the withdrawal of the share of earnings which each well-conducted boy was entitled to for his own use. These earnings amounted to a penny in every shilling, but, with the exception of about a halfpenny in every shilling thus earned, and handed over for immediate use, the earnings formed a reserved fund accumulating for each boy, and to be given him when he should leave the asylum with a certificate of good conduct. We do not find that the system so successful at Mettray, of placing older or better-behaved boys as guardians of the discipline of the institution, was adopted at Stretton. At Mettray these 'chiefs' are in every way analogous to monitors in public schools, except that the power of inflicting punish-

ment is withheld from them. The elder brothers, as they are called, not only exercise a most beneficial moral influence over the more youthful inmates of the asylum—and more especially so as they are elected by the votes of the boys themselves—but they are a most important element in the institution, inasmuch as they supply those who may in their turn become masters of similar establishments.* This forms one of the most powerful inducements to good conduct at Mettray, and one of the highest objects of ambition. At Stretton, however, the sense of honour was encouraged, though in a less degree, by the boys being occasionally placed in situations of trust, as, for example, when they were directed to go on errands, or carry messages at a distance from the asylum. The records of Stretton only contain the account of a single instance where a boy took the opportunity of running away when so entrusted. On the other hand, it cannot be expected that we should find the results of an appeal to the sense of honour in any way analogous to those borne out at Mettray. Sufficient trial of the experiment has not been hitherto made in England, though successfully introduced by Dr. Arnold, at Rugby, and by a near relative of my own, for many years Captain of the Company of Cadets at Woolwich. In both these cases the influence was brought to act on minds which had received the highest educational impressions; but to expect that the punishment considered as one of the most severe at Mettray would have been dreaded in anything like an equal degree at Stretton would be preposterous. The removal of the Union Jack from the dining-hall at Stretton would have produced little, if any, impression upon the inmates, while the temporary withdrawal of the tricolor at Mettray was felt by every individual as a personal disgrace. Such an *esprit de corps* would be an invaluable fulcrum to raise the general character of any institution, and not least of one where it is of the utmost importance that each inmate of the asylum should feel that his own reformation contributes materially to the maintenance and support of that character. The period of residence at Stretton ranged in the case of reformations from one year to three years. The failures were generally to be found in

* The 'chiefs' are young men of unblemished reputation, who have been trained to the office of teachers, and are never taken from among the wards, from which latter body the 'elder brothers' are chosen.—*M. D. H.*

the case of those who after a few months' stay in the asylum either absconded or were dismissed for bad conduct. If they could be retained for a longer period than a year, there was always great hope of their reformation. Of forty boys who had been under the care of Mr. Harvey, the third and last master, at the period of the report published in 1848, 26 were reformed. Of these, the longest resident in the asylum stayed two years three months and three weeks; the shortest remained for the period of one year, except one boy, who absconded in 1847, after a stay of seven months, but who was heard of as a soldier, and well reported of in 1848. On the other hand, of the fourteen failures, six stayed less than six months. Only two out of the fourteen remained two years, were then placed out as reformed, but afterwards relapsed. With regard to age, the statistics collected by the chaplain (Mr. Powell) and Mr. Harvey, demonstrated that it was far more difficult to reclaim the very young boys than those above the age of fourteen. Of the 81 boys who had left the asylum up to the year 1827, and who consisted of 39 reformations and 42 failures, 32 were more than fifteen years of age. Of these 32, there were 20 reformations and 12 failures. Again, of these 32 above fifteen, 26 were above sixteen years of age. In these last there was a larger proportion of reformations than among the 32 above fifteen—namely, 17 reformations and 9 failures. Again, of the 26 above sixteen years of age, 8 were above seventeen. Of these 8 above seventeen there was a larger proportion of reformations than in the 26 above sixteen, viz., 6 reformations and only 2 failures. These calculations, however, were not confirmed by the results of subsequent years, as it became the practice to send to the asylum a greater proportion of younger boys. But the above remark as to the period of each boy's stay in the asylum held good subsequently to 1827, when a new master was appointed at the death of Mr. Cox. Out of 30 boys under fourteen years of age, reformed under the second master, Mr. Johnson, only 11 remained in the asylum above two years; this was also the case with only 16 out of 52 above fourteen years of age, who were also reformed at the time the calculation was made. In 1853 it was ascertained that out of 80 boys who had been under the care of the third master, Mr. Harvey, 51 had been reformed—average 63 per cent.—but that

only 2 of these 51 were under fourteen years of age. The remaining 29 were deemed failures; 18 of these were afterwards either in gaol or transported; 4 were afterwards ascertained to be doing well; the rest were never more heard of. It did not follow because so many boys were dismissed as failures that the institution produced no beneficial effect upon them. As in the case of the 4 boys above mentioned, who after dismissal were found to be doing well, so in many other instances letters were received from youths who were earning an honest livelihood, and who acknowledged with gratitude that some of the good seed sown at Stretton had taken root in their hearts. Some curious tables were drawn out by Mr. Harvey, to show the proportion of boys who entered the asylum with one or both parents, or as orphans, and also the degrees of instruction received by each at the time of admission to the asylum. A short analysis of these may not be uninteresting to your readers, as forming data on which to ground arguments useful to the supporters of new institutions. Of 81 boys who were under the care of the first master, 18 had both father and mother, 31 had one parent only, and 32 no parents. Of the 18 who had both father and mother, 6 were reformed and 12 failed—average, 33 per cent.; of the 31 who had only one parent, 17 were reformed and 14 failed—average, 54 per cent.; of the 32 who had no parents, 16 were reformed and 16 failed—average, 50 per cent. Of 142 boys who were at Stretton under the care of the second master, 60 had both father and mother: 37 of these were reformed, while 23 failed—average, 60 per cent.; 59 had one parent only: 35 of these were reformed and 24 failed—average, 59 per cent.; 23 had no parents: of these, 10 were reformed and 13 failed—average, 43 per cent. Of 70 boys who had quitted the asylum, under the third master, at the period when these calculations were made, 30 had both father and mother: 15 of these were reformed, 15 failed—average, 50 per cent.; 20 had only one parent: 17 of these were reformed, while 3 failed—average, 85 per cent.; 20 had no parents when admitted to the institution: 13 of these were reformed and 7 failed—average 65 per cent. It is observable, that whereas during the earlier periods of the asylum the percentage of reformatations was extremely variable and fluctuating, latterly they showed a steady and considerable increase. Then

as regards the degree of education which the youths had received at the period of their admission into the asylum. Of the 81 boys admitted under the first master, 9 only could read and write; 24 could only read; the remaining 48 had received no instruction. Of the 9 who could read and write, 7 were reformed and two failed. Of the 24 who could only read, 13 were reformed and 11 failed; whereas of the 48 who were totally uneducated, 19 only were reformed and 29 failed. The balance here is immeasurably in favour of education. Again, of 142 boys admitted under the care of the second master, 22 could read and write, 47 could only read, while 73 had received no instruction. Of the 22, 14 were reformed and 8 failed; of the 47, 33 were reformed and 14 failed; whereas, of the 73 who were uneducated, 34 only were reformed, while the failures amounted to the great number of 39. Of 70 boys admitted to Stretton under the third master, at the period of making the calculations, 24 could read and write, 23 could only read, and 23 had received no instruction. Of the 24 who could both read and write, 16 were reformed and 8 failed; of the 23 who could only read, 14 were reformed and 9 failed; while of the 23 who entered the asylum uneducated, 15 were reformed and 8 failed.

‘These figures plainly show two important facts. First, that education, while it evidently had made great progress, did not prevent youths from being criminal; for, whereas during the first and second masters’ time the number of the uneducated was double that of those who had received some instruction, under the third master, those who could read and write, or only read, more than doubled in number the uninstructed.

‘Again, another fact is established by the above figures, viz., that when the ignorant came to be a large minority in the asylum, during the third master’s residence, the preponderance of reformatations over failures became distinctly visible. In former years the great majority of the uninstructed had remained failures. This circumstance might be partly owing to the improved mode of teaching, or better management, which long experience had induced, and partly to the influences and spirit of emulation exercised by the educated majority over the comparatively ignorant minority.

I have trespassed on your columns, sir, I fear, at unrea-

sonable length, and will close my letter with a few general details gathered from the published reports of Stretton. Most of these are to be found in a circular addressed to the subscribers after the close of the asylum last year by Mr. Bracebridge, so honoured by public estimation for his humane exertions in the East, who for many years was one of the most liberal supporters of the Warwickshire asylum, and, latterly, one of the most active and unremitting in attendance at the board of management. I am, by aid of these documents, enabled to state that between 1818 and 1854 the number of boys received into the institution amounted to 350. Many of these had been capitally convicted. The average number at a time within the walls was 15. The whole number of reformed boys was 227, giving an average of 65 per cent. I find I was in error on a former occasion when I stated that the per centage of reformations exceeded that amount. The produce of the boys' work in the period of ten years next preceding the close of the asylum, amounted to 210*l.* 19*s.* 2*d.* This was, of course, inclusive of the cost of materials. Of this sum, articles amounting to 768*l.* 2*s.* 8*d.*, were sold to gaols. The remainder, amounting to 1341*l.* 16*s.* 6*d.*, were sold to the public. The general cost of each boy during his stay (taking the average of 36 years) was found to be 21*l.* 2*s.* The cost of each reformation, exclusive of failures, was 25*l.* 14*s.*; inclusive of failures, it amounted to 29*l.* 0*s.* 4*d.* The average of yearly subscriptions, taken on a period of 36 years, was 250*l.* The donations to the asylum, funded as stock, but sold out at intervals to supply the excess of expenditure over income, amounted to 400*l.* The average period for which the boys who were reformed remained in the institution was fifteen months. The cost of a boy in Warwick Gaol for one year, including the expenses of prosecution and trial, was found to amount to 32*l.* The expenses attendant upon transportation were of course considerably greater.

‘As there has been a demand on the part of the public to have the economical part of the question sifted as regards the reformatory treatment of juvenile delinquents, I have confined my remarks entirely in this letter to facts and figures. I might have made the case much stronger had I dwelt on the subject in its far more important light, namely, that affecting us

as an enlightened and Christian nation. The eloquent words of Chief Justice Dallas, addressed to the grand jury of the county of Warwick, on the 12th of August, 1816, when the proposal for the asylum at Stretton-on-Dunsmoor had been submitted to him, may here properly find a place. 'Who can have beheld,' said he, 'but at the moment with a sinking heart, a miserable boy dismissed from the bar of a court of justice, to be released at the end of a short confinement, without protection, without parents, or, what is worse, the authors of his being the authors also of his profligacy, without means of employment or prospect of subsistence, and driven almost of necessity into the downhill path of guilt, till, by an impulse which becomes at last irresistible, he is hurried to the precipice on the brink of which no stay is to be found! To provide for the future reception and employment of these unhappy persons, and to inspire them with the love and fear of God, and a due respect for man, is the most prominent feature of your plan; thereby to complete the good which would otherwise be great, but of which, with this last provision, the measure will be full. This is the character of the plan you wish to be enabled to carry into effect. It wants not to be recommended, it cannot be dignified by me. It is a fabric which, should it rise, will require no inscription.' The fabric rose, flourished, and has passed away. All honour be to its memory. Its noblest and most enduring monument will be found in the success of future institutions of a similar character, and in the universal recognition and adoption of those sound and just principles which, confined for a long period within the walls of Stretton, are now carried abroad with the winds of heaven, and are finding their way into every heart throughout the length and breadth of our land.

- 'I am, &c.,

'COUNTY COURT, Bristol, Nov. 3, 1855.

J. E. EARDLEY WILMOT.'

The statistical facts contained in the foregoing letter are curious and interesting; but the numbers are too small to serve as a basis upon which any theory could safely stand. It is difficult, if not impossible, to determine how much of the effects produced under each of the masters is to be attributed to his personal character, and how much to the varying circumstances which it was the compiler's object to illustrate by his table.

CHARGE OF JANUARY, 1845.

GENTLEMEN OF THE GRAND JURY,—

THERE are two classes of cases to be found in the calendar of the present Sessions on which I must detain you for a brief space. Under one of the two heads, I am happy to say I only find a single name. It is the first charge of the kind which ever came before me, and I sincerely wish it may be the last. A bill will be presented to you, charging a prisoner with committing an assault in pursuance of a conspiracy to raise wages. As this is a matter of great public concernment, I desire the foundation of the charge to be clearly understood.

By the old law of England, combinations or agreements among artisans or other working men to raise wages were illegal. No doubt it was also illegal for masters to combine to depress wages. But this impartiality was apparent, not real. Masters being a small body, could meet privately, and enter into an understanding with each other secure from detection, whereas the operatives, as they are now called, being a multitude, possessed no such facility. But even if the impartiality had been real and practical, instead of simulated, or, at best, existing only in theory, such a law would have been open to censure. Whether in any particular case it is wise or foolish to enter into these combinations is a question which cannot be disposed of by law, and therefore it is one which no legislature should presume to determine. At the same time, it would argue a want of candour to conceal from you my opinion that, as a general rule, it is better both for employers and employed to enter into no such combinations, but to let each master and each workman agree as best they may. Why should not wages, like all other commodities, be left to find their market price by individual transactions?

This, Gentlemen, is the way in which the question strikes me. But, although the remarks which I have submitted to you may point to the right general rule, there may be excepted cases; and even should experience prove that the rule has no excep-

tions, it is one of those truths much better left to the sanction of public opinion than to enforcement by law.

A growing conviction that the law, as it formerly stood, was in its operation one-sided, led to its repeal; and masters and servants now stand on the same footing, not only in theory but in practice. I grieve, however, to say that many of the working classes are not satisfied with this concession. Keenly alive to the injustice of artificially lowering wages, they appear to think that almost any means of raising them are permissible. That the operative class should strongly desire to augment the remuneration of their labour is natural and blameless. That they should regard those of their body who undersell them in the labour market with dislike is also natural, though not quite blameless. But that they should attempt either by intimidation or violence to prevent others from selling their time at the price for which those others choose to part with it, is an oppression which no code of laws deserving respect can ever permit. What indignation would our artisans very justly manifest against a combination of bakers or butchers who should by threats, and still more by blows, prevent their brethren of these trades from selling their commodities at a price lower than the combination had determined ought to be exacted!

Nor is the impolicy of such a course less capable of proof than its injustice. Let us take the case of a strike, which is a combination to raise wages, enforced by large numbers refusing to work at all, unless at the price for each fixed by the whole body. In the first place I will observe that, in almost every instance in which the contest has become general, that is to say, in which a large body of masters on the one side, has been opposed to a large body of operatives on the other, the working people have eventually succumbed. Yet, that they should have been compelled to yield, however mortifying at the moment, was, probably, far better for their permanent interests, than that they should have been victorious; as wages which are too high to afford the employer the average profits of capital, must, sooner or later, drive the trade from the district in which so onerous a tax is imposed. On the other hand, the masters have strong motives not to depress wages beyond the limits assigned to them by circumstances over which there is no control. One of two

effects would surely follow, perhaps both. They would either force the working population to emigrate into districts where masters acted with more liberality, or to turn to other employments which might afford better wages. This is one effect. The other would be to invite into the trade, which was thus augmenting its profits by reducing payments for labour, a host of competing masters to share the advantage.

Gentlemen, I believe nothing is more true than that it is to the interest of employers to remunerate the labour of their workmen by the highest rate of wages which they can afford, consistently with their retaining the average profits of capital; and I believe it to be equally true, that a sound knowledge of his own interests would prompt every workman to be satisfied with that rate. Upon these points, however, neither you nor I, Gentlemen, nor even the Legislature, ought to dictate to either side. All that the Legislature and courts of justice can do with advantage is, to keep the peace between the contending parties; to say to them, You may do whatever you can by reasoning, or by persuasion, to induce others to act as you think right, but where reasoning and persuasion end, there also must you stop yourselves. You must neither resort to force nor intimidation. The working man's labour is always his most valuable property, too often his only property; and those in whom it lies either to make, or to enforce the law, would most culpably fail in their duty if they did not strain every nerve to prevent any interference with it either from those above him, or from his equals.

The second class in the calendar, of whom I am now to speak, consists of the receivers of stolen goods. My foregoing remarks have been directed to the vindication of a most important branch of free trade; but, Gentlemen, freedom of trade, although as I must think, a noble doctrine, has its necessary limitations. Free-trade has the strongest tendency to increase the number of all transactions to which its maxims are applied. And precisely for that reason we must place cogent restraints upon it when such freedom is applied, directly or indirectly, to transactions, the number of which it is the interest of the community to diminish to the lowest attainable point.

It will be conceded that the most pernicious of all commercial operations, are the purchase and sale of stolen goods. Of the parties to this nefarious traffic, by far the most injurious to

society, is the purchaser, called by lawyers the *receiver*. He is the capitalist, and here, as elsewhere, capital is the mainspring of commerce. A thief who could only effect sales of his plunder among the honest members of society would be so impeded in his course by the suspicions of those to whom he applied, as quickly to discover that he had embarked in an unprofitable calling. He would resemble a merchant in the desert, who could not exchange his goods for the necessities of life. Moreover, the receiver-capitalist, I believe, in many instances, acts as a sort of banker to the thief, furnishing him with advances on the credit of plunder not yet captured.

The truth, then, of the proverb, that 'were there no receivers, there would be no thieves,' is made obvious. And the Legislature has not been slow to do all it can to intimidate the chief culprit, in making the offence of receiving the property, knowing it to be stolen, a felony of a high class, and subjecting it to severe punishment. But alas! Gentlemen, numerous are the difficulties which obstruct the police in bringing these great offenders to justice. The parties to a purchase and sale of stolen goods are usually confined to the receiver himself and the thief. Now the unsupported evidence of a thief cannot be acted upon with safety to the innocent, and corroborative proof cannot be obtained in one case in a hundred. Hence, although the persons and the dwellings of receivers are well known, convictions of these depraved and depraving wretches are of rare occurrence.

The general rule of English law, Gentlemen, is to make men answerable only for specific acts. There are exceptions, but I will not trouble you with them on this occasion. Thus it would be of no avail, if a hundred persons, each of unspotted character, were to testify to their belief that a given individual carried on the trade of receiving stolen goods. No more would it avail even should each of them put in evidence facts and circumstances which would convince every hearer that the belief of the witness was well grounded. The accused party would still be secured from all responsibility until some specified criminal act could be brought home to him.

But, Gentlemen, perhaps you will be of opinion that testimony which would be insufficient to affect the prisoner with the pains of law, might nevertheless make it incumbent on

every honest proprietor to eject such a tenant from his house. I hope, Gentlemen, if you and I were the proprietors of tenements notoriously harbouring receivers of stolen goods, and enabling them to carry on their unlawful traffic, we should feel that in accepting our rent, we to some extent became partners in their iniquity—that in a qualified sense we should stand towards them in the relation in which they stand towards the thief—we should afford them facilities for committing their crimes. Happy would it be for this country if such a sentiment could find its way to the heart of every landlord.

The institution of property, Gentlemen, cannot be set at nought, as wild enthusiasts have sometimes preached, without aiming a fatal blow at the happiness of mankind. But if property ought to be respected, it does not follow that it ought to be worshipped. In my opinion, its rights, or alleged rights, have been often treated with superstitious reverence, and have been maintained to the sacrifice of higher considerations. And, Gentlemen, I look forward with great confidence to the time when an owner who, knowingly or by gross negligence, permits his houses to be occupied for the purpose of carrying on any traffic obnoxious to the laws of his country, will be held himself responsible; and by fines and other visitations, taught, through his own selfish interests, a due regard to the interests of the public.

Gentlemen, we are not slow to act on this principle when it conduces to our private advantage. Suppose a servant lying under grave suspicion of having been dishonest to his former employers should offer himself for hire. Unless he can clear himself from these aspersions, or convince us that he is a reformed character, we should reject him at once, and we should be little moved by his argument should he plead that he had never been convicted, and that suspicion was not proof. It is only when the disregard of the moral principle, to which I have adverted, will put gain into our own pockets, and when the injury will fall not upon ourselves, but on others, that we talk of the injustice of acting on suspicions, and the necessity for shutting our eyes to the strongest probabilities, and to the well-founded belief of a whole neighbourhood.

I have dwelt, Gentlemen, at greater length on the offence of the receiver than I otherwise should have done, because it is

one which prevails to a greater extent in this town than in almost any other. Our staple manufactures are in metals, often the precious metals, and these costly materials are necessarily entrusted to the honesty of very large numbers, some of them of tender age, and thereby lamentably open to the snares of the seducer. Again, metallic wares are soon made by the melting-pot to change their form, and thus to defy identification; so that not only are facilities multiplied for obtaining stolen goods, but the means of detection, ever scanty, are in Birmingham seriously diminished.

SEQUEL.

The powers of a local Act in operation at Liverpool might perhaps be usefully made general throughout the country.

LICENSING MARINE STORE DEALERS.

To the Editor of the Midland Counties Herald.

'SIR,—I have been favoured by an influential member of the Liverpool Corporation with the following particulars as to the regulations adopted by that body with reference to 'Marine Store Dealers.'

'In common with 'Pawnbrokers or Dealers in second-hand Goods or Articles,' all 'Marine Store Dealers' are compelled to take out licences from the Corporation, which, upon the recommendation of three respectable housekeepers, and after due inquiry and report by a trustworthy member of police, are granted upon payment of five shillings each. The licensee is compelled to renew this annually, at the same charge. Any change of residence must be registered, the charge for which is one shilling. The licence is in force for one year, or until the next licensing day, unless the party is convicted of some offence which, in the opinion of the presiding justice of the peace, shall render it expedient that the same be revoked.

'On the purchase of any metal or other article, the dealer is bound to enter a description and particulars of the same in his books, together with the name and address of the party from whom the purchase was made, and generally to give every information to the police; and so well is this carried out, that

it not unfrequently happens that goods can be identified at once from such entries, even before they are seen. Notice of any omission of such entries, or other bad or suspicious conduct, is entered in a book kept by the police for the purpose, and alphabetically arranged, and upon the recurrence of licensing day, it is only needful to turn thereto to see if any, and what amount of objection exists to any particular licence being re-granted. As an instance of the care with which the above system is conducted, I may quote one of the memorandums with respect to an application to remove a store for the purchase of such articles, which is refused on the ground 'of not being in a situation where it could be under the eye of the police;' in fact, the system comprises every possible security for the accomplishment of the object in view.

'Let me recommend the consideration of this matter to the Recorder and Corporation of this borough, where probably more young thieves are trained in the commission of crime by the temptations to which they are exposed in our metal shops, than in any other town in the kingdom, and where the facilities of sale are the greatest.

'I am, Sir, your obedient servant,

'PREVENTION.

'May, 1855.'

An ingenious project for making it the interest of house owners to admit none but respectable tenants has been devised by a friend. His explanation of his plan will be found in the Sequel to the Charge of March, 1854.

CHARGE OF OCTOBER, 1845.

GENTLEMEN,

ON looking over the calendar which I hold in my hand, I find a large proportion of the prisoners charged with the offence of embezzlement—an offence of a dangerous character to the prosperity of your town, and one which, if it can be effectually repressed by the power of the law, ought, unquestionably, so to be dealt with.

Addressing the class of employers as I do at this moment, no facts or arguments are required to convince you of what you must have learnt by your own experience, namely, that nothing is more clearly essential to advance the interests of manufactures and of commerce than the cordial and well-founded confidence of masters in the fidelity of their servants, especially servants of the class who are placed in situations of trust. The importance of such fidelity, not only to the comfort but even to the commercial existence of masters, is obvious. Nor is it less vital to the interests of the servants themselves. In this town numerous instances have occurred of persons rising from the lowest walks of life to positions of wealth and influence, obtained by unexceptionable conduct and honest industry, and I am sure you will unite with me in hoping that such instances may be multiplied from year to year. But this advancement has proceeded by stages; the candidate for wealth and honour, who starts from the ground, does not attain the heights of his ambition at a leap, but mounts to it step by step; and one of his most important stages of advancement was attained when he became a servant who was thought worthy to be entrusted with the receipt of money on behalf of his master.

From that place to partnership, or to the position of an independent employer, the transitions are comparatively easy, provided always that the confidence which had brought the servant into the trust remain unbroken and undiminished. Considering, then, how much society in both its great divisions of employers and employed have need of this moral security,

I never read a charge of embezzlement in the calendar but with feelings of anxiety ; and I shall always exercise the powers entrusted to me for the repression of crime with a peculiar sense of responsibility as regards this offence.

But, Gentlemen, the longer I sit on this bench, the humbler grows my opinion of the efficiency of criminal jurisprudence, especially as regards its deterrent operation, either on the offender himself who is visited with the penalties of the law, or on those exposed to temptation, but who have not yet found their way into the dock.

Thus impressed, Gentlemen, it will not surprise you that I am always looking round with a careful eye to find other means of diminishing the quantity of crime which prevails among us, which means may come in aid of our criminal judicature, and do something, I hope much, to advance the great end for which laws and courts are constituted—the protection of the honest and the peaceable against those of an opposite character. These means range themselves under two heads—the prevention of crime, and the reformation of the criminal.

It is not my intention to enter at all on the latter division, and only partially on the former.

Gentlemen, it will be found that every species of crime requires its own set or class of preventives, in addition, however, let me say, to education and good training, which are common to all. Against some offences, a numerous, well-ordered, and vigilant police, is an obvious and excellent preventive. As, for instance, that of burglary, when the eye of the party to be injured is closed in sleep ; but even here the individual may do much for himself by locks and bars and other similar expedients for keeping the robber at bay.

In the particular crime, however, which prompted this Charge, neither the policeman nor the locksmith can guard your property from the spoiler. By giving him your confidence you show conclusively that he is not one of that class on whom it has a wholesome effect to turn the eyes of the police. Suspicion, until some act of the servant had raised it against him, would be impolitic as well as cruel, and might produce a state of mind leading by slow but sure steps to the consequences which had been feared.

Then, with regard to security from locks, you yourselves put the key into your servant's hand, and you must do so if your confidence is real and not feigned. In short, you must do so if you are to have the assistance which you propose to yourselves in creating the trust. But to indulge in gratuitous misgivings would be to withhold the confidence which you profess to repose in him, and thus to invite reprisals. Nevertheless, there are many expedients which may be used with honour and advantage, because their operation will be to prevent or weaken the temptation to crime, instead of being directed towards its discovery when committed. Where the servant is employed to receive moneys for his master, let the periods of reckoning be at first very short, and what is even more important, let them be observed by the master or the agent with whom the receiver is to account with unfailing punctuality; and, as far as it is possible, let the identical notes and coins which the servant has received be those which he pays over in discharge of his accountability. I have here, Gentlemen, to remark that my experience in this court has led me to believe that much blame rests on employers for their supineness with regard to the observance of their own rules, and that, in permitting money to remain in the hands of their servant, in breach of such rules, they have themselves created the temptation under which he has succumbed; and that being so, it has, I am sorry to say, not unfrequently happened that a rule which the master had suffered to fall into desuetude has been raised up against the servant upon his trial for embezzlement, so that I can never be satisfied with being told what are the rules of any house; I am obliged very minutely to ascertain whether these regulations are living or dead—whether they are safeguards to both parties, or a snare to the unhappy prisoner.

When the servant has, by a sufficient length of probation, established his right to an extended confidence, let it be given; but let the concession not be tacitly assumed by the servant; it should be a distinct act of promotion by the employer. For instance, the servant of proved trustworthiness may now be permitted, out of the sums which he receives for his master, to make payments, and to draw his own salary, accounting only for the balance. But this ought to be felt as a great extension of the trust, and as necessarily exposing the servant to consi-

derable temptation. That second stage, therefore, should not be arrived at until his character is of known stability.

By the observance, Gentlemen, of these and similar precautions, many a youth might have been saved from the abyss into which he has plunged—many a youth of hope and promise for ever blighted.

It is distressing to inflict pains and penalties even upon the rude and the brutal, upon those who are inured to hardships, and for whom public shame has no terrors; but it is a bitter task indeed to administer the law against those whose habits, manners, and training make its visitations absolutely appalling, and whose sufferings are generally multiplied in the persons of relatives and friends, even more keenly sensitive than the prisoners themselves. I am sure you will agree with me, Gentlemen, that an employer who is led by the course of evidence, or by his reflections, to be conscious that his own negligence may have had much to do with his servant's fall, must be thrown into a state of feeling very little to be envied.

With your permission I will pursue the subject of preventive checks a little further.

Mr. Stephens, the Superintendent of Police, keeps a register of all complaints which are brought to his knowledge of the loss of money or goods by robbery or theft. I have inspected this document, and have been grieved to observe what a large amount of depredation is committed by prostitutes. With regard to offences of this description, no doubt the vigilance of the police is a preventive check, the absence of which would soon be felt in the multiplication of such robberies. But still we cannot but perceive that, for the due repression of these evils, we must have resort to very different expedients to those of police—a higher education for all classes is called for—religious and moral training must take a more prominent place among us than has been yet accorded to it, until the appetites are brought under subjection to the conscience.

Nor can we safely neglect minor expedients. We suffer in England for the want of harmless and elevating recreations. Whatever augments health of mind and of body enables us to make a stouter defence against the tempter. And, Gentlemen, amusements, properly conducted, might materially subserve even the purposes of sound education.

From the register to which I have adverted, it would appear that in this town more property is stolen by persons who enter houses with false keys than by any other mode of theft. This being an ascertained fact, I have made inquiry as to the state of the locks on the house-doors of the working classes, who are the greatest sufferers by this kind of depredation, and I am told that they are of the rudest description, insomuch that a few skeleton keys are all that is required to command admission to these dwellings, exposed, as they too frequently are, by the absence of their occupants, who have no servants to leave in charge of their property. Here, then, a small expenditure on the part of the landlord would work as a most efficient preventive check, which, I think you will agree with me, ought not to be overlooked.

I have often in this court urged upon both juries and prosecutors the mischiefs which flow from the pernicious habit indulged in by the shopkeepers of this town, in common with those of other places, who persist in exposing their wares at their shop-doors. Many a child has been led into overpowering temptation by this practice. But when I have remonstrated with the shopkeeper, he has stated in justification or excuse, that, while his brethren in the trade adopt the same expedient for attracting customers, he is compelled to follow their example; and, Gentlemen, whether compelled or not, I fear he will follow it until the Legislature prohibit this blameworthy exposure of property, which, I think, might very appropriately be punished by confiscation of the articles thus exhibited, or, at all events, by a pecuniary fine, rapidly increasing on every repetition of the offence.

Such, Gentlemen, are the means of prevention which it occurs to me to lay before you at the present moment. That I have not exhausted the subject will be obvious on the slightest reflection.

SEQUEL.

A VOLUME might be written, and usefully written, on the preventive checks to crime which individuals and private associations might exercise without the aid of law, by acquiring a salutary influence over the minds of the classes standing below them in the scale of rank.

It is impossible to overrate the efficacy of individual action, if society were sufficiently imbued with the sense of what each of its members is capable of doing, and ought to do. There is not one among us, however humble in degree, who has not some power of this kind. Indeed, in many respects, the nearer in social position are those who influence to those who are to be influenced, the greater and more persistent that influence will be. Benevolent attentions on the part of the rich lead to the hope of benefactions. Indeed, it would be difficult to persuade the poor that sympathies which stop short of gifts are genuine ; and it is perhaps more difficult for him who is moved by real sympathy to withhold his bounty, or even to restrain it within its due limits. And yet, how manifold the evils which accrue from charity, unless its administration be governed by sound judgment, and by a reserve which wears the appearance of grudging parsimony ! Thus danger lies on either side the path. The open hand encourages the pauper spirit—reliance on the aid of others ; it weakens every motive to industry and thrift, eventually fastens upon the object of its benevolence a curse more terrible than the direst poverty, and, what is more to our immediate purpose, it is fatal to the existence of all wholesome ascendancy over his mind. On the other hand, an equal soundness of judgment, great command of temper, and unvarying gentleness of manner, are required to prevent him whose wants are very sparingly supplied out of stores which he knows are ample, from indulging in feelings which make the intercourse between the parties anything but conducive to a frame of mind likely to elevate his aspirations, and give firmness of tone to his resolves.

To the rich, therefore, charity is both a difficult science and a somewhat dangerous art ; and hence the consequences of yielding to benevolent impulses uninformed by knowledge, and unregulated by the power of self-control, are so frequently seen to be not merely nugatory, but in the highest degree injurious.

Now the poor in their charities are not exposed to these dangers. A kind word from him who has nothing more costly to bestow is not suspected of insincerity ; and, when something is spared by poverty to destitution, the recipient is aware that the bounty must have narrow limits ; and, furnished as it is only by personal sacrifice, that it would be heartless and cruel to

press upon generosity entailing privations the extent of which he so well knows how to estimate ; and thus he is preserved from the temptation unduly to depend upon it as a substitute for his own exertions ; moreover, his benefactor is also his observant neighbour, and he therefore will not attempt to exaggerate his sufferings for the purpose of augmenting the supplies with which he is furnished.

It is difficult to over-estimate the amount of good which one poor family may effect in its own immediate district by its example of honest industry, of the practice of the family virtues at home, and by its courtesy, ready sympathy, and helpful disposition towards its neighbours ; and all this may be done with very little acquaintance with what I have called the *science* of charity, and with no great call for judgment in practising the kindred art. Nevertheless, the main labours and anxieties of charity in its largest sense must fall upon the rich. That these duties are arduous furnishes no excuse for neglecting them, and the affluent must cast about for the means of so fulfilling them as to attain the *maximum* of good with the *minimum* of evil.

It has long appeared to me that no power which arises out of the social position pertaining to high and middle life in this country is capable of being turned to better account than that which we possess over those below us as their employers. We know its extent in two ways. We see it exercised both for the advantage and for the oppression of the employed. In either direction its potency is immense.

To that class of employers who can deliberately abuse their authority, to the injury of those unhappily subjected to it, I have nothing to say ; they must be deaf to remonstrance. There is, too, another class, of which I have not much better hope. I refer to the opinion held by persons who consider that no relation exists between employers and employed except that of buying and selling, the wages being the purchase-money, and the labour the commodity sold. Many such masters there have been, and not a few remain : low-minded and selfish men, who see in the ignorance around them only a safeguard against encroachments on their own superiority.

They who have the good of the people at heart have witnessed with painful emotion how little has hitherto been done

by employers to raise the morals, the manners, and the intellectual condition of those over whom the accidents of life have given them such powerful influence.

All honour to the few who have acknowledged and fulfilled the duties towards their servants which remain to be discharged after all pecuniary claims have been satisfied. This is a topic on which I can only dwell for a moment, and therefore I must pass over in silence establishments, in and near my native town, to which it would give me great pleasure to direct the attention of the reader, pausing only to speak of one which stands confessedly at the head of all where the duties which I have indicated have been observed. I refer to Price's Candle Company, a joint-stock association for the manufacture of candles of a superior kind. This company has five large establishments, one in Lambeth, another at Birkenhead, and three elsewhere. They employ about 2300 persons, of whom 300 are females, chiefly girls; a considerable proportion of the remainder being boys. The company was founded by Mr. William Wilson and his sons, James Pillans Wilson and George Ferguson Wilson. The sons are now the managing directors of the company. These gentlemen, with the consent and hearty approbation of the shareholders, have attached to their manufactories schools for the children, mechanics' institutions for adults, playgrounds for all ages, and refreshment rooms. Chapels have also been provided, with chaplains who devote their whole time to the pastoral care of the workpeople. The comforts of the sick are not forgotten, and they are sent to the sea-side when occasion requires.

Above all, these gentlemen personally associate with the objects of their care and affection on terms of genuine cordiality. In short, the Candle Works form a great plebeian university, in some respects better deserving the name than more exalted institutions, where the culture of the heart and the moral principles are not included in the *curriculum* of the studies, and where the connexion between the *alma mater* and the *alumni* begins at a later period of life, and for educational purposes quickly arrives at its termination. That the workpeople cannot enjoy these advantages without large pecuniary contributions on the part of the company is self-evident. Of their amount I am not competent to speak, but I know

that the contributors regard them not in the light of sacrifices, but as the purchase-money of benefits to themselves; candidly avowing that, even in a pecuniary sense, they are repaid by the high moral tone which has been created, and the devoted attachment of the employed to their employers, which is resulting from the expenditure thus made for their welfare.

No doubt every relation of life which brings different classes into intercommunication ought to be used by the higher and better educated for the purpose of raising, as far as possible, their inferiors in the moral and intellectual scale. But, in our age and country, by far the most important in this point of view is that of employer and employed; and it is of growing importance. Assemblies of working people are becoming larger and larger, and these incorporations of augmented numbers, while they afford additional facilities for the work of benevolence, call for more copious emanations of its spirit. For these large aggregations, while they admit of more being done for the people by their employers, and by the people for themselves, are liable to suffer with greater severity from moral neglect, and to run into wilder disorders than can ever happen where the community is composed only of a few individuals. It is here, as elsewhere, in the progress of civilization. The farther we advance the more potent become the influences of society both for good and for evil.

There are two advantages flowing from this union of education with profitable employment which cannot fail to strike the reflecting reader as of the highest moment. The first is, that this intermingling of instruction and training with the affairs of a concern carried on for profit, especially where, as in the instance of the Candle Company, the pecuniary consequences of such an alliance are satisfactory to the employer, subtracts, *pro tanto*, the education of the lower classes from the sum of charitable undertakings, and thereby not only relieves our charitable funds of a heavy burden, but places education itself on a sounder basis, unendangered by those fluctuations which belong to voluntary institutions, founded simply on the principle of benevolence.

The second is, that it disposes, so far as it comes into operation, of the two great difficulties which impede our educational progress; that which arises out of diversities in religious opinion, and that which arises from the desire of parents prematurely to put their children into a position of aiding in the

support of the family to which they belong. There would be no law, no committee, no body of subscribers to interfere with the employer on the subject of religion, while on the other hand he would have the strongest motive not to offend his workpeople by setting at nought their feelings on the subject. Then, as regards the wages of the child, they would begin early, and advance, *pari passu*, with his education; and even if they were not quite equal to what he would gain at first, supposing education to be altogether abandoned, yet the prospect of an ultimate addition to his power of earning would reconcile many a parent to the immediate sacrifice. Not that I feel at all certain that any sacrifice would be necessary, the value of every person, young or old, as an instrument of profit to his employer, being at once augmented by a well-conducted system of moral and mental training. Moreover, a usage is now in commencement, which will probably more and more prevail every year—that of masters applying an educational test to candidates for employment. In the Candle Company there is a preparatory school for such candidates, the reward of proficiency being admission into the works.

It is not, however, given to us all to sway the destinies of large bodies of our fellow-creatures; yet every reader of this book probably is or will become the master or mistress of domestic servants. Let him give due thought to the responsibility which attaches to the headship of a family. The members of a household are united in a relation which may be turned to much good or to much evil, and in which direction that relation shall operate mainly depends upon those who fill the highest positions, and form the governing powers of this little commonwealth. Taking the word 'home' in its genuine sense, as comprehending all who live under the same roof-tree, it may be safely conceded that charity ought to begin there; and the philanthropist who dispenses his bounty, whether of money or labour, abroad, while the education of his servants is neglected, their health and comfort uncared for, their hearts chilled by haughtiness, excessive or untimely displays of anger, or contempt of the courtesies which every human being owes to every other, is, to say the least of him, a very inconsistent character, and one whose conduct casts a doubt on the purity of his motives.

The need for recreations is at last beginning to be felt among us. Provide harmless amusements, wholesome for the body, the intellect, and the affections, and the young, at all events, may be reasonably expected to choose them in preference to debasing pleasures. Relaxation from toil, whether of body or of mind, is a necessity of our nature. It will be snatched where it is not conceded, and where time for enjoyment is stinted, a strong temptation is offered to make up by intensity what is lost in duration. Hence the resort to stimulants. 'Pleasures of some sort are necessary,' (says Johnson) 'to the intellectual as to the corporeal health; and those who resist gaiety will be likely for the most part to fall a sacrifice to appetite; for the sollicitations of sense are always at hand, and a dram to a vacant and solitary person is a speedy and seducing relief.* I believe we ought to place recreation upon the same footing as food, clothing, rest, and instruction, and not permit any curtailment of the leisure appropriated to amusement, under the notion that we are calling for only a slight and unimportant sacrifice.

Much valuable training, which is but too frequently neglected, may be carried forward on the playground. The conduct of lads among themselves is often grossly unjust on the one side, and is met on the other with unbridled anger, not infrequently settling down into hatred, and prompting acts of revenge. A steady, good-tempered, well-mannered, and judicious superintendent of a public playground, when such a privilege shall be granted to that important body, the boys in the street, would do much for the moral training of youths. While checking a querulous tone in the weak, he would restrain the more powerful from oppression. Where statements were conflicting, he might select a jury of youngsters, and, presiding as judge, act upon their verdict. It would be his duty to preserve order and decorum both in language and action, and to cultivate that attention to the courtesies of life wherein we islanders, especially the younger sort, are so deficient.

I have often thought that a digest of the rules which govern the various games in which boys engage might have a salutary effect on their temper and even on their morals.

* Piozzi's *Anecdotes*, p. 81.

At present these rules or laws are imperfectly known, ill-defined, and some of them constructed in a spirit of chicanery. Thus I remember when a schoolboy myself there were rules at the game of marbles which gave advantage, not to the best player, but to the one who could first utter certain formulæ. The consequence was that an employment sought for the sake of pleasure became a source of irritation to those engaged in it, annoyance to bystanders, and concern to the reflective teacher who saw that the play-hour was wasted, indeed worse than wasted, in a training to ill temper, bad language, and litigious habits. A little code of laws, not departing without clear necessity from those handed down by tradition, but framed with a view to promote skill and prevent disputes, would be appreciated by young people as a valuable gift.

All who have made themselves acquainted with the tastes and habits of our lowest class, and especially those of its younger members, know how passionate is their love of dramatic entertainments. The penny theatre is the most seductive temptation by which they are beset. They steal to obtain the means of entering these pestiferous dens, and what they hear and see there contaminates even the minds of thieves. But every passion is a power, and may be turned to good purpose. I doubt whether a philanthropist could be better employed than by furnishing dramatic entertainments of a suitable kind to a juvenile audience of the lower classes.

It would require some prudence on his part to prevent abuse, but the attraction would be so great, that the candidates for admittance would submit to almost any conditions rather than be excluded; such as cleanliness of person, and neatness of dress, perfect order while present, and so forth. Tickets might be given to the conductors of Ragged Schools; subscribers to the expense of the undertaking might also distribute tickets to those on whom they thought such encouragement would be well bestowed. Ever since the days of the Puritans—a body of men for whom I have great respect, but who have done a vast amount of mischief as well as of good—we have been trying the ‘putting down’ principle of action. The few dictating the relaxations of the many. It has failed, and ever will fail. Instead, then, of confiscating the pleasures of the poor and ignorant, let us try the effect of a well-devised system of barter.

Let us induce them to exchange recreations unprofitable or pernicious for those of a better kind ; keeping in the selection which we offer for their choice as near to what they desire as a due regard for their spiritual and bodily health will permit. We want the poor man's ' Book of Sports.' Who will write it ?

Years probably will elapse before these suggestions are held to be anything better than dreams. Be it so. But throwing them out is a step, though a short one, towards their realization.

Meantime something may be done which does not wear the same appearance of innovation, and which requires neither numbers, nor wealth, nor social position for its accomplishment. An entertaining book read by instalments on a certain evening in every week to such an audience as I have described, who may assemble in a school-room, or in an apartment in a private house, might be made a very attractive pastime, and something more. Take Robinson Crusoe, for instance. Read him for half an hour, and at the end of that time illustrate the lecture by tracing his progress so far as you have accompanied him, and *no further*, on a map. Say a little of York, from whence he starts, and of Hull, whence he embarks for London. Explain any hard words that have occurred, availing yourself of prints when they can be procured. These little expedients, and others which will occur to the reader, will engage attention, and the same audience will come again and again. But the instructor must not be too didactic. He must not break the thread of the narrative by interpolating explanations while the reading is going forward. He may do well now and then to substitute an easy periphrasis for a difficult word, which word, however, he should replace at the end of his reading, making his audience understand that it is equivalent to the phrase which he had used in its stead.

Readings like these, given in a frank and cordial spirit, would produce beneficial effects in more ways than I can stay to enumerate.

Cheap concerts are a charming recreation for the labouring classes. I have seen the enormous area of our Town Hall at Birmingham, with its vast galleries, filled to repletion by an audience which had paid for admission ; the aristocratic portion

sixpence, their humbler neighbours threepence. To be sure, from their clothes and their demeanour, even the latter might have been considered by a stranger as belonging to the higher classes of the town, had not their immense numbers shown that only *plebs* could furnish so great an array.

Pictorial exhibitions by the aid of the magic lanthorn, and dissolving views, may be turned to good account at no great cost either of time or of money.

These suggestions might be multiplied *ad infinitum*, if space and the reader's patience were not limited quantities.

The necessity for the improvement and extension of amusements for the lower classes of the people is illustrated by the following extracts:—

A collection of papers on the recreations of Liverpool, interesting, although that interest is of a painful kind, has been reprinted from the *Liverpool Mercury*. I give some passages from it. One is from the description of a place of amusement, called by its proprietor, 'the most elegant lounge in Europe.'

'A great portion of the promenade being open to front the stage, many are induced to stand here smoking whilst the performance is going on.' It 'consisted of nigger singing, dancing and gymnastic feats.' . . . During a subsequent visit in the body of the lounge we noticed a mechanic, in company with his wife and his little boy, a child about five years of age. The parents had ale before them, and every now and then they handed their glasses to the boy that he might drink. Both father and mother looked stupidly sottish; the child, sickly and restless, urged the mother, to 'come home.' 'Come home, mammy;' 'mammy, come home,' frequently lisped the childish tongue. At length the mother, staggering from her seat with her boy, made her way towards the door. 'Oh, hold my head, mammy, everything is turning round,' cried the little fellow. The mother held his head, but she was unsteady, and a younger woman kindly took the child under her charge.'—p. 24.*

Here follows a description of one of the Liverpool theatres:—
'At the entrance to the theatre, standing by the check-taker, is

* *Liverpool Life: its Pleasures, Practices, and Pastimes.* Liverpool: Egerton, Smith, and Co., Mercury Office, Lord-street. 1856. Price One Shilling.

a representative of magisterial authority, in the person of a policeman, bearing on his arms two stripes, and on his breast a good-conduct medal. The audience in the pit numbered about one hundred and fifty, and at least fifty of these, by their dress and demeanour, declared themselves to be prostitutes. They crowded round the entrance doors, and conducted themselves in an unseemly way. Attracted, after the first act of the play, by the sound of voices in earnest conversation, the rustling of dresses, and the noise of feet, we move from our seat, and look around us. The proprietor, with a view to the comfort of the audience, has run a partition round the outside of the pit. The space between the partition and the wall of the building forms a sort of promenade, where gaudily-attired girls use their best endeavours to entrap the unwary, or to make assignations with the fully initiated. Between the acts this promenade was thronged with persons of both sexes. The females were from fifteen to twenty-five years of age, the males from fourteen to sixty. Three young lads were there, who had the air, dress, and polish of well-educated boys. They wore caps, were juvenile in their appearance, and the oldest could not have been more than seventeen years of age. They were doubtless the hopes of kind fathers, the darlings of fond, affectionate, devoted mothers. Here they were walking beside, whispering and talking to, leering at, and in their way joking with, coarsely-behaved, vulgarly-bedecked, painted beauties—girls who have nothing to recommend them but rich attire, the unnatural colour of their faces, the unchaste desire, and the utter absence of every feeling of shame and decency; abandoned ones, in whose breast the flame of pure affection must have been extinguished long ago; the peculiar glare of whose eyes suggested an early and agonizing death in a lazar-house, and a dishonoured and disowned grave. Not only were young men here, but men of middle age—men who in their daily occupations pass for respectable, and fill responsible situations. The hollow laughter of the lewd ones, their coarse conversation, the various arts used to entrap the crowd of youths and men that moved around them, the nod of recognition given to some ‘fast young man,’ the make-believe earnestness in the shake of the hand given to hoary-headed ‘men about town,’ were pitiful to see and hear. Vulgarity and vice were ostentatiously displayed and recklessly

indulged in, at this place of public entertainment, *licensed by the magistrates*. The scenes in detail are

‘Not to be named, my lord, not to be spoken of :
There is no chastity in language,
Without offence, to utter them.’

pp. 39, 40.—There are, however, two sides to the picture of Liverpool recreations.

‘We have seen what the authorities permit individuals to provide for the recreation of the masses ; we will now see what the authorities themselves provide for this purpose. First, and above all, we class the Public Baths and Washhouses established by the Town Council. These institutions, extensively as they are known, and largely as they are taken advantage of by those for whom they were intended, are, notwithstanding, by many thousands totally uncared for and neglected. It may perhaps excite surprise that some members of our local legislature know nothing more of these life-invigorating and body-cleansing establishments than they may be supposed to learn from hearing the proceedings of the baths committee read from time to time in the council-chamber. Yet the public baths reflect honour on the town, bestow abundant credit on the council, are model sanitary purifiers, and are hourly bestowing blessings—cheap, pure, and healthful—on the toiling masses of this great community. A few statistics will bear out this statement. The weekly bath returns are made up each Wednesday. During last week, (July, 1856,) nearly 25,000 persons bathed at the public baths, at a cost to themselves of more than 500*l*. At Cornwallis-street baths the daily receipts range from 4*s*. 6*d*. to 53*l*. 6*s*. 5*d*. Last week, at that establishment alone, 10,516 persons bathed, the receipts being upwards of 179*l*. In the corresponding week of last year, the receipts were 53*l*., and the number of bathers, 3678. On Saturday, throughout the year, the number of bathers is generally double that on any other day of the week.

‘The Corporation Baths, as is well known, are situated in Cornwallis-street, Paul-street, and George’s Pierhead. Paul-street baths have attached to them washhouses ; and for the south end of the town there are washhouses in Upper Frederick-street. The latter were originally the public baths—the first of the kind established in this town or country—and were opened

fourteen years ago, principally through the instrumentality of that friend of the poor, William Rathbone. It is to the baths in Cornwallis-street that we now wish to draw particular attention. They are the largest, most modern, best frequented, and contain the most recent improvements. The foundation-stone was laid in 1849, by Mr. J. A. Tinne, the then chairman of the health committee. The edifice was designed by, and erected under the superintendence of the borough engineer, Mr. James Newlands; and well do the baths deserve the high encomiums which have been passed upon them by celebrated and professional men who have visited them. The building contains three large plunge baths—first, second, and third class; sixty private warm baths, of similar classes; together with shower, vapour, and sitz baths; the whole being under the management of Mr. Andrew Clarke, the superintendent.

‘The first thing that strikes the visitor to these baths is the scrupulous cleanliness everywhere observable, the order and regularity with which business is transacted, and the highly trained and systematic manner in which all the servants appear to discharge their duties—no unnecessary noise, no bustle, even when business is brisk and bathers are waiting for bath rooms. ‘The system’ here seen in operation is not only commendable, but worthy of imitation. This opinion is formed after having frequently visited all the public baths in Liverpool during the whole time they have been in operation. That all the arrangements are brought into such a state of efficiency is to be attributed in a great measure to the long experience, and firm, yet respectful demeanour of the superintendent, who is zealously supported in all his plans and arrangements by the present chairman and vice-chairman, Messrs. Wagstaff and Fernihough, and some of the other members of the baths committee. If it be a good quality in a servant to take a deep interest in his work, and display zeal and assiduity in the discharge of his duties, the Town Council are fortunate in securing the services of Mr. Clarke. He thoroughly identifies himself with the place by all he does and says; and as we walk through the various departments accompanied by him, and listen to the continuous flow of common-sense observations, given, as they are, with a rich smack of the true Milesian brogue, the fact is still further impressed upon us. He is a tall, powerful, well-built man. In

early life he was engaged in constructing the wooden walls of old England, and in middle age he assisted to man them. He has been in all quarters of the globe, and picked up a variety of information, and thus profited by his travels. He is not possessed of showy or shining qualities, but, like a good old-fashioned craft, carries a good cargo without making much display. Age is fast telling on him, and he has undergone much change since he 'mixed a nice comfortable bath' for us, fourteen years ago, in Frederick-street. He is yet hale, hearty, and obliging, and we hope he may long remain so, and that speedily the great wish of his heart may be granted him—'a regular supply of water from Rivington,* when I can keep my fountain in play, and my place in the order it should be.'

'In the old-fashioned way, and in order to convey an idea of the baths to our readers, we will begin at the bottom, and look at the third-class plunge bath, or, as it is commonly called, the 'twopenny.' We are now at the entrance, talking with the superintendent. It is Saturday evening, about eight o'clock; half-a-dozen dirty-looking little fellows, shoeblacks and others, are coming up the steps. Cash in hand, they walk up to the money-taker, and demand 'a twopenny 'un.' They receive for the twopence a ticket and a clean coarse towel. There is no doubt of their having been here before, for as soon as they obtain the ticket and towel, they run down the flight of steps leading to the baths, screaming with delight in anticipation of their enjoyment. We follow them, the superintendent observing as we descend, 'These pay me the best; they are my best customers.' The noise of boys out of the water, the splashing and shouting of those in, prepare us to some extent for the scene that awaits us. On entering the bath we find upwards of a hundred boys, most of them in a state of nudity, ducking, diving, floundering, plunging, dousing, sousing, rolling, sprawling, tossing, and tumbling in the water. The turmoil in the water, the tumult of voices out, are for the first few moments positively stupifying. Mr. Clarke notices our consternation, and quietly chuckles at the sight. The bath is forty-one feet long, by twenty-seven wide; the water is five feet deep at one end, and two and a half at the other; the floor is of asphalte, the

* Now accomplished, January, 1857. Heretofore the supply of water to Liverpool was but scanty.

sides of stone : there is a 'spring-board' placed at the deep end to assist the lads in diving. There are twenty-four rooms, or receiving boxes, around the bath, all being destitute of doors. In these the bathers place their clothes, and as many as ten or twelve boys at one time deposit their habiliments in one of these boxes. As our conductor feelingly remarks, 'Poor little fellows! their clothes in most cases occupy little room, and what I give them is the only clean covering they ever get.'

'In the good old days of good old Egerton Smith, who, as it is well known, took an active part in promoting a knowledge of the useful art of swimming, it was our practice and privilege to visit the Floating Bath.* On one occasion a young man unacquainted with the bath jumped into the 'deep end,' and, as he could not swim, was in some danger. We assisted him into shallow water, and afterwards in the bath became very friendly; both being destitute of clothes, an equality was constituted. We returned to our respective dressing-rooms, and again met on the deck whilst 'waiting for the boat.' Much to our surprise, the young man did not speak. He was dressed in the height of fashion, considered himself no doubt a gentleman, and could not condescend to notice or look upon plebeians. 'Old Egerton,' as he was familiarly and affectionately called, saw this, very likely knew what we *felt*, and quietly walking up, he took hold of our jacket, and rubbing the cloth, he said, 'Never mind him: *this* is the difference between you; and though you will now have to be two people, the same boat will carry you both ashore.' This was our first lesson in 'the philosophy of clothes.' It made a deep impression, and we felt it in full force whilst looking at the crowd of boys and young men disporting themselves so boisterously, yet innocently, in the twopenny plunge bath. As old Sandy Mackay remarks, 'There, ye're a' brithers noo, on the one broad, gran,' fundamental principle o' want o' breeks!'

'Many gentlemen visiting this bath are impressed with the good appearance of the boys when destitute of clothes. Lord Alfred Paget, who visited it a short time since, in company with the Earl of Derby, expressed his great surprise and astonishment when looking at the clear skins, well-knitted frames, and, in some instances, wonderfully developed muscles of the boys.

* In the Mersey.

‘They might,’ said he, ‘be all noblemen’s sons.’ What an admission! He could have gone further than this, and yet have spoken the truth.

‘Many of the boys not having any regular employment stay a long time in the water. The keeper tells us that he notices boys who bring a little bread with them; they will stay in the water two or three hours, going out occasionally into the box to eat a little food, and then dash into the water again. Many of them are very expert swimmers, and they all appear to be excellent divers. A deal of amusement, of a very profitable character to the boys, is frequently witnessed by visitors throwing money into the water, in order that the boys may dive for it. The vice-chairman of the committee (Mr. J. C. Fernihough) is well known by the boys for his enjoyment of this sport, and his presence with a few friends is generally the signal for a display of diving diversion. The gentlemen cast their coin upon the waters, and it is found, after the lapse of a few moments, in the possession of some of the boys, who swim about in great glee, holding the much-prized coin between their teeth. Their dexterity in diving and bringing up the smallest coin is remarkable; and although in many cases they not unfrequently jump on each other, we witness no display of ill-temper. On remarking this to our guide, he says: ‘I had many a hard turn with them before I got them to this order; but now most of them know that so long as they behave decently they will be permitted to remain, and no longer; and as soon as I see or hear of any act of violence, they have me down on them.’ Mr. Clarke seems to take an interest in the lads learning to swim, and says: ‘the next generation will be a generation of swimmers, and in a great sea-port like this it ought to be so; the great majority will be indebted to my baths for that.’

‘There are some strange scenes to be met with at ‘the two-penny.’ On one occasion a swimming-match had been determined on between two boys, one of whom had lost an arm, the other was destitute of a leg. With that love of fair play which is, and we hope ever will be, the distinguishing characteristic of true Britons, the whole of the boys, to the number of eighty or ninety, left the bath, and stood, naked, shouting, huzzaing, and rollicking, on the brink. By this means they secured for the contending swimmers a ‘clear course and no

favour.' The distance was once round, starting from the shallow end. The excitement of the spectators was very great, and the cries most comical. 'Now, legs;' 'Bravo, arms;' 'Go it, pegleg;' 'Pitch into it, stumpy,' resounded on all sides. More fun of an innocent character amongst boys of such a class we never saw. Many of the lads laughed until they fell into the water; others fell over them for fun; even the grave face of the bath-keeper relaxed into a genial smile, and all were uproariously mirthful. It soon became evident that legs had the advantage. He with the two propellers gained speedily on his opponent, and came in an easy victor. He was speedily surrounded by his companions, one of whom, clapping him on the back, observed, 'I knew very well you could soon take slates out of stumpy.' In a few moments they were all in the bath again, kicking, splashing, and tossing about, and enjoying themselves in the water as only boys can.

'We leave the 'twopenny,' and pass on to the fourpenny plunge bath. This is similar in appearance to that noticed, but, not being so much used, the place has not such a dingy appearance. The rooms here have a looking-glass and door attached to each. They are twenty-six in number. This bath is frequented more by middle-aged and young men, who find it hard to stand the rollicking fun of the boys, and therefore pay an additional twopence for the additional comfort. Seeing the crowded state of the twopenny bath, we learn with great satisfaction that the committee have resolved to reduce the price of the fourpenny to twopence. This will likely have the effect of inducing more to go into the first-class bath, whilst it will be conferring a great boon on those of the humbler class, to whom twopence is a great consideration, and a good bath a positive necessity. It is very pleasing to observe here the young and middle-aged mechanic laying out a few pence so judiciously on a Saturday evening. Contrast what may be obtained here for fourpence or for twopence with what may be obtained for a like amount at the gorgeous and glaring palaces that are fast adorning every corner of our streets; and reflect also which mode of expenditure constitutes the best preparation for the Sabbath. It is said that cleanliness is next to godliness, that health of mind is in a great measure dependent upon that of the body, and that cleanliness of the one will induce to purity

of the other. These things, it may be supposed, savour too much of the earth for our ministers to notice in the present day, or we might hear more of washings and purifications, and less of religious rancour, than we now do. That filthiness of person and viciousness of disposition are closely allied all must admit; and all must admire, even in its present limited extent, the means which our local governors take to purify the bodies of the people. Every ward in the town ought to have its public bath. Baths would be much cheaper than gaols—the more cleansing the less crime; and if the price of the plunge baths could be reduced to a penny for the poorest class, the change would be glorious.

‘We pass on now to the first-class plunge bath, which is a very beautiful building. The style and decoration are purely Egyptian; the colouring is in exquisite harmony, displays good taste and sound judgment, and is altogether the best display of ornamentation we have seen in Liverpool. The bath is fifty-seven feet long by forty-one wide; the sides are of tiles, the floor of Yorkshire flagstone; the bath is emptied and the floor thoroughly scoured with sandstone twice a week. The water is three feet deep at one end, and seven at the other. By reason of the floor being lighter in colour than the other baths, the water here has a beautifully clean appearance. There are thirty-three dressing-rooms round the bath, each of which contains a looking-glass and boot-jack. This bath is not frequented so much as we might expect. There are now twenty persons in it, chiefly young or middle-aged men. We notice one youth who is an excellent swimmer, and the bath-keeper informs us that this youth on one occasion swam round the bath forty-five times, thus performing a distance of upwards of two miles in one hour and three-quarters. In the centre of the bath stands a fountain, in the form of a vase, from the edge of which the jets send forth the water. When this is in play, with two-thirds of the pressure on, the form is very beautiful. It is a source of regret to the superintendent that he cannot keep the fountain continually in play, by reason of the scarcity of water; ‘but,’ says he, ‘when Rivington is all right, and I get my proper supply, I will keep it going; for besides moderating the temperature of the bath, it is beautiful and refreshing to the eye.’

‘We now visit the department of the building devoted to

private warm baths. The charges for these are—First class, one shilling; second class, sixpence; third class, twopence. It is very interesting to observe the distinction which is made between the classes. In the first we find a carpet, two chairs, a bootjack, boothooks, shoehorn, fleshbrush, hairbrush, and comb, a large looking-glass, hand-ewer and soap, and three towels. We notice further the fleshbrush has a long handle. There is also a tap by which the bather can regulate the temperature of the bath. In the second class we find a carpet, a chair, a small looking-glass, a fleshbrush without any handle, a tap for regulating the temperature, and two towels. In the third class we see no carpet, no fleshbrush, no tap, one towel, and no looking-glass. Thus it would appear, as was suggested by a gruff-looking mechanic—probably a Chartist—‘That a poor fellow who can only pay twopence is not worth looking at, and it would do him no good to be allowed to see himself! and as to a fleshbrush, it’s the swells as needs all that sort of thing.’ In one respect the baths are all alike—they are exquisitely clean. The warm baths are frequented chiefly by mechanics and persons engaged in sedentary occupations. All that we had an opportunity of conversing with expressed themselves in the strongest manner, and in grateful terms, as to the good which the establishment had conferred on them physically and socially. Our conversation with the superintendent showed this in a much stronger and clearer light.

‘‘I have men coming to me now,’ said he, ‘who used to come to my place in Frederick-street fourteen years ago. I noticed them week after week, and now look for them as regularly as I do for my meals. At first they were content with merely bathing; after a few weeks I noticed them bringing small bundles under their arms, which I soon discovered to contain a change of linen, or probably, in addition, a clean singlet and stockings. They then brought a piece of soap with them, and gave themselves a thorough cleaning and brushing. And many a Saturday night, after I have closed my place, and gone to take a walk through the market, I have met some of those customers of mine, nicely cleaned up, their wives with them, sober and respectable, making their little purchases for the week. Such sights, I assure you, do my heart good to see; and what I often say, the Corporation never have done, nor

will they ever lay money out to a better advantage than in building baths for the people.'

'In addition to the first, second, and third class private warm and plunge baths, the charges for which range from a shilling to twopence, private cold shower baths may be had in the third class for a penny. We are glad to learn that many a working man, on his way to his daily toil, steps into the baths at Cornwallis-street, pays his penny, gets a clean towel, and, entering into the third class bath room, refreshes himself by a cold ablution in the morning.

'The warm baths are more in requisition on Saturday evenings and Sunday mornings, and for this purpose the committee wisely keep them open until ten o'clock on Saturday, and from six to nine on Sunday morning. We confess that the visit to these baths on a Sunday morning has given us more unfeigned pleasure, and awakened within us more cheering hopes for the elevation of the people, than anything we have ever seen. The attendance here, and the characters of those who attend, are a further proof that if pure and wholesome recreations be provided for the people, at a cost within their reach, they will be so well appreciated as to become remunerative to the promoters—a fact that Mr. Clarke again and again insisted on when pointing to the crowds of youths and men pouring in on the Sabbath morning. Persons who thus commence the day by purifying their bodies will not be found at the 'rat hunt' or 'dog race' as the day advances. Their enjoyments will be of a purer, loftier, and more pleasing character; and, from all we have seen and all we have heard, we know of no institution, here or elsewhere, that is in a quiet, unobtrusive way bestrewing the pathway of the labourer with such rich, lasting, inexpensive, and abundant blessings as the Corporation baths.'—pages 52—59.

Then succeeds a very different scene. It is vividly drawn:—
'The public-houses known as 'milling cribs' are kept by men who either are, or have been, members of the P. R. (prize ring), men who, having fought and nobly (?) conquered in some brutal personal struggle, are now resting from their labours 'under their own vine and fig tree,' and (judging from the gross impropriety with which they conduct their business) 'none daring to make them afraid.' One of these taverns was visited shortly after

'the great fight for the championship,' in expectation of hearing something of interest respecting 'gallant Tom,' and his 'recent engagement,' or of 'scientific Harry,' and his last 'terrible tourney.' The house is small, and in a very dirty street and neighbourhood. Scarcely a week elapses that this street does not furnish one or more cases for the police court, some of them revealing a state of things frightful to contemplate, all of them displaying depravity and degradation disgraceful to the town, and to the authorities who allow vice thus to propagate itself. Passing a man selling trunks, bandboxes, and mousetraps, a woman selling yellow-looking cabbages and faded 'potherbs,' having been pushed aside by a drunken sweep, and hustled and cursed at by a crowd of youths who were playing at 'pitch and toss' by the light of the gas-lamp, we reach a small door on a level with the footpath. On pushing this door open, we find ourselves at once in the celebrated 'Vaults.'

'The parlour in which we found ourselves was the only room in the house solely devoted to drinking. It was very dirty; the floor had not been swept or scraped for a long time, and with the dirt from men's shoes, sawdust, expectoration, and ale, which was continually being slopped, we were standing in a puddle, foul and filthy. There were three small tables with forms at the sides, and two forms attached to the wall: these, together with the recess formed by the window, were the only seat-room provided. The room was about four yards square; the walls were ornamented with portraits of 'Pets of the Fancy.' To speak in the slang of 'the Fancy,' we noticed two 'plucky-looking bull terriers,' with 'goggle eyes,' and a little 'under-shot,' 'a broken-haired whelp of a likely-looking sort,' with a dead rat lying beside it, two game-cocks, cut and trimmed ready for fighting, but wretchedly painted, and a lithographic portrait of 'Jem Corbett,' a celebrated 'bruiser.' Jem's nose appeared to be 'slightly out of the perpendicular,' his 'gob' 'any shape but the right one;' his 'peepers' seemed recently to have been 'in mourning,' and his face was 'all cocked hats.' There were seven men in when we entered. One of them was engaged in reading *Bell's Life*, and, on asking him if he could allow us to look at the paper for a few moments, he requested us to shut our sanguinary 'trap,' and 'wait a bit.' Coarse and disgusting as the form of expression was, it was not uttered

offensively, but as the man's manner was: he evidently wished and intended to be civil. We acted on the significant advice given, and sat down with our 'trap' closed.

'On looking round, we observed that four of the men were well-formed, muscular fellows, with an expression of great determination on their countenances, and on several of their features impressions of 'ugly hits.' One was dressed like a 'navvie,' with a clean smock. His rosy face was indicative of outdoor exercise and indoor beer drinking. There were two youths, one of whom was engaged with the paper, the other spent his time in slipping off the form on to the filthy floor, and gathering himself up again as he best could. He was said to be 'a little shaky on his pins.' The room behind that in which we sat was called the kitchen. It was small and smutty-looking, but in good keeping with all around. On the table there was a large loaf, some cinders, a couple of knives, the dust, or rather ashes, of tobacco, and an infant, which a woman, coarse-looking and vulgarly attired, was supposed to be attending. The man who brought in the drink was quite the reverse of *nobody*. He was *all* body and head, his arms and legs being quite insignificant appendages. He wore a dirty blouse, and prefaced almost every sentence he uttered with a frightful expression, calling upon the Almighty to strike him dead. He was not alone in this form of speech: every man present used either a blasphemous expression, or a disgusting oath, considering, no doubt, that this rendered his language more emphatic or effective. The conversation consisted chiefly of remarks and opinions on recent fights; the character of the combatants; whether they had displayed sufficient courage, or science consistent with their position; whether such a man really meant to fight, or such another ever ought to have entered the ring. The men were frequently on the point of quarrelling with each other, as we thought, but it turned out they were only conversing in their ordinary manner. Anything more demoniacal to look upon than the visage of these men, when excited on some 'professional' point, could not easily be conceived. From their oaths and imprecations it appeared as if they considered that gladiatorial and fistic powers were the leading attributes of the god of their worship—the sublimest aspirations to which their wicked souls could rise. Discourse more abominably profane

and unmanly could not have been uttered by men who, let it be remembered, pride themselves so much on their manly conduct and noble bearing.

‘The night was close, and the window being open to admit the air, the noise and disturbance which never ceased in the street, caused the conversation to be a good deal interrupted. At this some of the men were frequently excited, and swore horribly what they would do, and where they would speedily hurl the bodies and souls of the wretched creatures outside, whose quarrels about their ill-gotten and sinful gains created the disturbance. Several times stones were hurled against the house, and we feared the windows would be broken. In this apprehension the waiter appeared to share, for he rushed outside, gnashing his teeth, clenching his fist, and threatening, in language that cannot be uttered, to wreak his vengeance on abandoned but unfortunate disturbers of his peace. We were listening to a man entering into minute details of a dog-fight, which he had witnessed but a few days before, and the attention of the whole company was completely absorbed in this degrading recital, when the door of the room was suddenly thrust open, and the proprietor of the establishment staggered in, accompanied by two men. They were all cursing, and threatening some person for having done some things which were neither named nor hinted at. Their talk consisted chiefly of obscene and filthy allusions, senseless sayings, atrocious threats referring to the souls and bodies of any who differed from them, fiendlike descriptions of tortures which any of the company would speedily undergo if they would ‘stand up’ for a few moments. Nothing appeared to be wanting to fill up the cup of these men’s iniquity. They appeared to be shameless, incorrigible, irreclaimable blackguards.

‘The proprietor of the ‘Vaults’ was a powerfully-built man, and, had he been trained in the paths of virtue instead of those of vice, he would have been a noble-looking fellow. His large Roman features and well-developed form were now associated with everything disgraceful and degrading to humanity. He might have been a useful member of society, earning his bread by his own industry. He chose rather to lead an idle life, and is now a dog-fighter and a pugilist, a wife beater, and a dissolute, demoralized, and depraved man. He might, from his

size, nerves, and form, have made himself famous in the annals of this brutal pastime, sadly miscalled 'sport,' but, as the celebrated historian of the P. R. says, 'He had a soft place under his left ribs,' and did not 'take his lickings with a relish;' therefore it is he has not fought much lately, but gratifies his vicious propensities by seeing others fight, or fighting his own dogs. This is a manly Briton—and what a comment on fighting of all sorts! 'Mine host' has increased in bulk very much during the last few years, and was now slovenly attired, his shirt breast open, and from his waistcoat pocket dangled a massive gold chain. He rolled about, and eventually righted himself, and slouched down on the form. His companions were two worthless, knavish-looking fellows—one gruff-looking, snarlish, but tolerably sober; the other hirsute, rakishly dressed, but sottishly drunk. The latter introduced himself to the company by stating his name, and expressing his readiness 'any minute' to 'jump' the immortal part out of any of the 'cooneys,' a race of beings he detested, and which he said it was his determination to drive into the burning lake.* Having given this information as to his person and propensities, he looks wildly round, declaring he will go, does not appear satisfied with the characters of his companions, and expresses himself in vile terms as to what he thinks of them. His friend and the landlord both exerted themselves to induce the fellow to stay; the latter, after calling him many opprobrious names, and using a variety of adjectives to show what colour and character of 'a fool' he was for entertaining the slightest uneasiness as to his safety or comfort, concluded his diabolical address by a very significant hint—'You had,' said he, 'six pounds; you have only spent four: you have two to spend yet, and we might as well skin *you* as any one else.' This appeared to set the fellow at rest for the time. He immediately afterwards paid for a gallon of ale, which was brought in, and handed round amongst the company without any distinction. Whilst this was being done, he was very anxious the company should examine his head, in order that we might see a terrible scalp wound which he had received, according to his statement,

* 'Cooneys,' the name borne, in the slang of the lowest class in Liverpool, by the Irishmen who are to be seen about the docks.—*M. D. H.*

in the Kaffir war. We thought it might have been received some Sunday morning nearer to the Aintree race-course [five miles from Liverpool] than the Cape of Good Hope. It was evidently the toemark of a native of this isle, and this drunken wretch seemed proud of the scar. 'The professionals,' who examined it minutely, seemed to entertain a very contemptuous opinion of so small 'a dinge,' as they called it, and any of them were ready to show impressions 'a good deal better.'

'We noticed that no one here called for a glass of ale. The ale was ordered in quarts or gallons, was brought in large jugs, and handed round in small glasses. Some of the company appeared 'loafers,' who never paid for ale, but relied for their drink on the ability, folly, terror, drunkenness, or stupidity of persons who turned in to this filthy resort. It was a matter of surprise where the stunted and dirty waiter obtained the ale. There did not appear to be any beer engine, no tap; and from the appearance of the jug, it might have been plunged into the liquid and filled in such manner. The speed with which it was brought rendered this probable. Smoking short pipes now became general, and as the ale began to take effect, the noise became greater, the swearing and blasphemy more scandalous than ever. Hellish schemes were openly spoken of, and heinous crimes were more than hinted at. One graceless scoundrel entered eating bread and cheese, and requested ale to it, for which he said he would not pay, but which, nevertheless, was soon handed to him. The conversation was just then turning on work, contrasted with fighting. 'The navvie' said he made his living by hard work, and did not rely on fighting or *anything else*. This sentiment, which was sneered and scoffed at by many, was taken up in a very earnest manner by the villain that was eating bread and cheese. He frowned contemptuously on the man who had uttered so execrable a sentiment, and went on to say that any man that lived by working hard was a highly-coloured fool; that he ought, moreover, to be sent to the infernal regions, if, indeed, that place was not too good for such a fellow. 'I used to work,' said he, 'but what better was I off? *I have a lad at home that I am training, and when I get him out on the streets he will keep me and himself all right, until he is sent abroad; then I must get another.*' The heart-

less miscreant chuckled with the cheese in his throat, and the company laughed at this infernal scheme.

'The hero of the Kaffir war again became uneasy, got up, and after refusing to drink a glass of ale, said something about 'drugging.' The landlord immediately took this up. 'Are you not Tommy's friend?' said he, 'and Tommy is my friend; you need therefore not fear drugging or slugging whilst with us; no one shall hurt a hair of your head whilst you are here; I'll see to that;' and again he called upon the holy name of Him, who, when on this earth, 'went about doing good,' and requested, with awful solemnity of purpose, that if what he had then stated was not strictly true, he might become a stiffened corpse! Tommy expressed himself if possible in still stronger and more horrifying terms. More ale was brought in, the revel became more fiendish. Brutal it was not—brutes could not act thus. It is only demons in human shape that could conceive or utter the hideous expressions heard on every side. The landlord staggered into the kitchen, and staggered back again, bearing in his arms an infant, and holding it up to the gaze of the revellers, he cried out, 'There's breed for you! Look at it!' Tommy reached forth his arms to take the child. 'Let go,' said he to the father, 'do you think I don't know how to handle a kid?' The child was pretty, though dirty, and almost naked, having only a small shirt or some simple garment to cover it. To see it smiling in the face of the drunken, depraved father, looking around on the countenances of the detestable creatures as they drawled out portions of a lewd song, or laughed at the filthy joke, was a picture of innocence surrounded by a deep framework of infernal depravity. At such a spectacle angels might have wept. For a moment, during the presence of the child, we thought the countenances of some of the men assumed a more pleasing expression; the rays of purity and spotless innocence reflected by the babe had touched the faces of these villains, but could not penetrate their obdurate hearts. The infant gone—the light withdrawn—they were themselves again, foul, fiendish, disgusting wretches.

'One young man had now become very drunk, and the waiter suggested that it would be necessary to 'double him up.' This was speedily accomplished, and when he was 'regu-

larly doubled up' he lay on the form asleep, his hat having been pressed tightly over his face. He would, no doubt, soon roll from this on to the filthy floor, and would then be spit upon. This young, drunken, crushed creature was said to be 'a nice, quiet lad, with good stuff in him, but he could not feed.' We were about to ask if the trial to feed him had ever been made; but recollecting the company around, and the allusion to our 'trap' being closed, we said nothing, and deemed this the better part of valour, for it became evident that a storm which we had noticed gathering would speedily burst forth. The imprecations against 'the cooneys' became louder and more terrible. Money was thrown down, and fighting was talked of and sought for, and amidst the devilish denunciations and awful requests impiously made to the Almighty, we made our escape.'—Pages 59—65.

THE LAYING OF THE FIRST STONE OF
THE BIRMINGHAM GAOL,

OCTOBER 29TH, 1845.

FROM the year 1839, the date of the Charter of Incorporation granted to Birmingham, until 1849, the prisoners tried at the Borough Sessions were committed to the County Gaol at Warwick, were brought again to Birmingham to be tried, and, if convicted, were recommitted to Warwick in execution of their sentences. This arrangement was a source of trouble and expense both to the county and the borough; nor was the County Prison adapted to carry into effect the improvements in discipline resulting from a nearer approach to true principles. On the 29th of October, 1845, the erection of the new prison at Birmingham Heath was commenced, the first stone being laid by the Mayor, Mr. Samuel Thornton, who, at the conclusion of the proceedings usual upon such occasions, requested the Recorder to address the spectators on the object which the Corporation had had in view in undertaking this work. The Recorder spoke to the following effect:—

LADIES AND GENTLEMEN,—

It can have happened very rarely that an assembly of the kind which I see before me has ever been collected to witness the deposit of the foundation-stone of a prison. The first impulse of the mind would be to revolt against a proposal to distinguish by a festive ceremony an event arising out of a cause so mournful and so humiliating to human nature, as that prevalence of crime which demands the erection of a vast edifice in every county, and in every large town, for the reception of malefactors—a home of guilt and of pain. It has, therefore, been thought fitting by my excellent friend, your Mayor, that I should briefly explain why it is that it has been deemed not improper to celebrate this occasion, by assembling so large a number of the respectable inhabitants of Birmingham to witness the proceedings of the day.

The characteristic of this prison has been clearly brought before you by the reverend clergyman whose prayer you have just heard. The truth which will be steadily kept in view in its conduct is, that pain though necessarily incident to the course of life of those who will be sent here, ought not to be inflicted in a vindictive spirit as retribution for the past, but administered strictly with the intention of producing the reformation of the offender; and so far as the law allows freedom of action to the local authorities, it will never be permitted to exceed the limits which experience may show will suffice to secure that great end. Punishments which originate in wrath, and seek only to vindicate the offended majesty of the law against a weak and erring fellow-creature, by plunging his mind into grief and subjecting his body to pain, is after all but a poor and unsatisfactory expedient for securing society against the repetition and the multiplication of crimes. Experience, that slow and costly, but sure teacher, has at length convinced us that even to attain our temporal object—the safety and comfort of society—we must, as a rule of practical wisdom, act on the great maxim of religion, that justice should be administered in mercy. Not that false and self-seeking mercy which prompts us not infrequently to spare ourselves the contemplation of suffering, and thus to work permanent injury on him towards whom, as we flatter ourselves, we are acting with benevolence; but with the mercy which raises in our hearts a

feeling of salutary kindness even towards the guilty, and engages us to that course of treatment which will be for the ultimate welfare of the sufferer himself; in well-placed confidence that the true interests both of society and the individual are not repugnant to each other, but can be attuned to perfect harmony.

The building, then, which will soon rise to cover the whole area pressed by our feet, may be appropriately called a moral hospital; and those who will have the conduct of it will, I trust, labour faithfully and zealously for the cure of the unhappy persons who will be consigned to their care; administering to the best of their ability the remedies which have proved most suitable to that great end. To accomplish this purpose, it has been found necessary very materially to change the construction and the arrangements of the older prisons as they exist throughout Europe. Man is a social being; but when individuals are collected into a community by reason of their offences, the social principle, which, under other circumstances, is the origin and promoter of our progress towards that which is good, becomes perverted—works in the opposite direction, and each prisoner is made worse by contact with his neighbour. In beginning the work of reformation, then, it is necessary to separate those who are brought to one spot by reason of crime; in order to counteract the unwholesome influences which result from the intercourse of the guilty with their fellows. This prison will therefore be conducted on what has been called the separate system, which must not, however, be confounded with solitary confinement. That the evil-disposed should be, for a time, divided from each other is conformable to reason, but that they should be secluded from all human society is not only unnecessary, but pernicious and even cruel. Isolation is a state of such dreadful misery when continued for any long period of time, that perhaps no form of torture which debased ingenuity has invented ever succeeded in producing an equal amount of suffering—suffering I mean as measured from month to month or from year to year, because, doubtless, it does not equal from minute to minute the intense agony of the rack or the stake.

The prisoner will be visited by ministers of religion and by the officers of the establishment, who will be chosen for their moral qualities. Thus intercourse with those who will raise

and improve him will be provided, while, on the other hand, association with such as would retain him in his degraded condition will be cut off.

Another great principle in the treatment of offenders will also be kept in view, namely, that there can be no healthy state of either mind or body without employment. Separation from his fellows, which implies that the prisoner must spend much of his time alone, soon makes him glad to receive the means of employment. The vacuity to which he is reduced teaches him that labour is a blessing, idleness a curse.

True it is that prisoners do not often bring into gaol habits of industry; but whatever power of that kind they may have possessed was, under our old system—in which they were called upon for no exertion—pretty sure to be lost. Earnest endeavours will be made in this prison to form the habit of labour where it does not exist, and to strengthen it where it does. I mean the habit of cheerful and willing application; for the odious toil of the treadmill, so far from inducing a disposition to labour, is far more likely, by the revolting associations with which it is accompanied, to make industry, when the prisoner is discharged, more irksome to him than it was when he entered the gaol. You will, I am sure, agree with me that if the discipline to which he will be here subjected should have the result of reconciling him to his lot—that of obtaining his livelihood by the sweat of his brow—a boon will have been conferred upon him of inestimable value.

It is impossible to overrate the importance of an enlightened system of Prison Discipline. I have already pointed out the benefits to be derived by the prisoner; but in how many ways would society itself be a gainer! Let the reformation of the offender be made the object to be attained, and there will be an end of all cruel punishments, since cruelty alienates the desires of the prisoner, and prevents him from co-operating in the work of his reformation; and I hardly need to tell you that, unless we can take him with us heart and soul, no system, however perfect, will produce its intended effect. Then, again, there will be no false humanity interfering to cut short the probation of the criminal, because the greater the kindness felt towards him, the stronger will the motive become to leave him under the operation of good train-

ing, until that training has wrought its full effect on his character. It will be felt that to withdraw him before his cure is effected will be to ensure a relapse, and to subject him to a repetition of his punishment.

I believe, however, we are yet at a distance from the time at which we can adopt all the principles which must be brought into united action before the treatment of criminals can produce results wholly satisfactory ; and we must be patient. We must not attempt to advance at a more rapid rate than the public will advance with us. If the administration of justice in any of its departments be so conducted as not to be in consonance with the feelings of the people, an injurious effect would be produced, even although the innovations were improvements.

Hastily and imperfectly as I have sketched the plan on which this prison is to be regulated, I trust I have said enough to show that the Corporation, in their invitation to you to meet them here, have done nothing which can militate against your sense of propriety.

Underneath the gaol at Warwick may still be seen the hideous vaults into which the illustrious Howard found his fellow-creatures thrust every evening at the hour of rest—if rest it was for them. Their feet were attached to a long chain, stretching from one end of their dungeon to the other, and in this damp and fetid cell they were detained through the night.

Had it been intended, Ladies and Gentlemen, to repeat in the edifice, the commencement of which you have just witnessed, these cruelties—now, thank God ! by the labours of the great man whose name I have mentioned, obsolete and almost forgotten—then, indeed, it would have been an outrage upon you, as Christians, to bring you here ; but when we reflect on the consequences of crime to the criminal, even where he escapes the visitations of human law, I am satisfied you will look upon this rising structure as upon a place of refuge about to confer on its inmates, although at the cost to them of some pain, the highest benefits in lieu of the deadliest injuries ; and I am unaware of any reason why it should not be contemplated with the sentiments with which you regard the two noble infirmaries that do honour to your town.

But, in the discovery and application of sound principles to the treatment of malefactors, we are only at the outset of our

enterprise, and we call upon you and the public at large for aid to perfect the great work. Perhaps this day's event may leave a lasting impression on minds which have not hitherto been directed to the topics of my brief address. Further, it may stimulate inquiry as to the legitimate objects to be aimed at in punishment, and the best means for their attainment. If so, I am sure you will not think your attendance thrown away.

Alas, for human anticipations !

The reader will hereafter be made acquainted with the facts which have called forth this exclamation.

CHARGE OF MARCH, 1847.

THE following is an abstract of the Recorder's Charge to the Grand Jury :—

Their duties, he said, would be heavy. Although seven weeks and four days only had elapsed since the last sessions, the calendar presented a list of 113 prisoners, which it was probable might be still further lengthened.

He had made inquiries with a view of discovering the cause for this sudden increase in crime, but he had been unable to refer it to any of the circumstances to which an augmentation when it occurred was usually attributed. The town, he was informed, had been very fortunate in preserving its trade—much more fortunate, indeed, than other manufacturing towns, as no difficulty was experienced by the working classes in obtaining employment. There were, however, permanent causes in operation which might throw some light on the increase of crime, although they would not account for any sudden movement in that direction. Among others, he would mention the power of Justices of the Peace summarily to convict persons charged with light offences—a power, of late years, considerably extended, with the view of preventing the necessity of subjecting the accused to the long detention which precedes a trial at the assizes or the sessions—a detention often greater than the imprisonment considered by the Court to be the true measure of the offence. But unexpected results followed, productive of greater evils than those which had induced the change in the law. When the prosecutor knew that his complaint would not draw down upon the head of the prisoner any very weighty infliction, his reluctance to prosecute was lessened, and thus this class of offenders brought to answer for their misconduct was gradually swollen ; a remark, he said, which applied in an especial manner to juvenile offenders, who now came under the animadversion of the law both in a larger proportion and at a more tender age than heretofore.

The short imprisonment which each underwent was just

enough to dispel his terror of a gaol, and to give him a lesson in the art of enduring a confinement, not continued to a sufficient length to make it very irksome. Consequently, it often happened that no sooner had he gone through his punishment for one offence than he came back charged with another. Two cases in the calendar, said the Recorder, would evidence and illustrate the truth of his observations. The first was that of a boy, who, in 1845, was twelve years of age; since that period—a year and three quarters—he had been summarily convicted seven times, his imprisonment varying from fourteen days to a month. Now, to say nothing of the expense of these seven convictions—a consideration which, though of secondary importance, was not to be slighted—they would see, upon a moment's reflection, that the outlay to which he had adverted had been incurred, not to diminish crime, but to defray the cost of training this youth to the profession of a criminal.

Looking at what had happened from this point of view, could they wonder that a lad who had been thus made familiar with prison-life and all its degrading incidents, on charges of breaking windows, vagrancy, and so forth, should now be sufficiently advanced in his education to be arraigned at the bar for felony? Again, he found in the calendar the name of a boy, who, in 1839, was nine years of age, and who since had been summarily convicted six times for attempts to commit felony. Who can wonder that the lad's persevering efforts are at length crowned with success? He would have ill-employed his opportunities and the instruction which he doubtless received from his associates, in and out of prison, if he had not raised himself to the dignity—for so the Recorder believed it was estimated by these poor creatures—the dignity of a felon!

These unforeseen consequences of a change in the law, made with the best intentions, had attracted the notice of Government; and he was led to believe that a remedy was in contemplation for this evil.

SEQUEL.

THE causes which affect the *quantum* of crime are so numerous, some acting to increase and some to diminish it, that although it may be possible to refer its amount throughout the whole country, at any particular period, to some general cause, like the high price of the necessaries of life, or want of employment, yet even so large a population as that of Birmingham, which approaches a quarter of a million, does not furnish a base sufficiently extensive for such observations.

I have compared the prices of corn from year to year with the criminal statistics published by the Corporation without being able to establish any connexion of cause and effect between dearth and high numbers; and I have been equally unsuccessful when attempting to trace an increase in the calendar to deficiency of employment when such deficiency existed.

In the manufacturing districts a flush of prosperity, which suddenly enhances the rate of wages, overwhelms the working classes with temptations to indulge in liquor—a cause of crime which is more potent for its increase than the diffusion of plenty is for its diminution. Indeed, it may be questioned whether the family of the working man who is in any degree given to drink, does not suffer more from want when he is thrown off his guard by having what he considers a surplus beyond the requirements of his wife and children, than when employment and its remuneration are both scanty. In the former case he very seldom limits himself to the surplus, but, losing self-command, he continues his wasteful indulgence until he has spent the portion of his wages which was to have been applied to the support of his family, while his habits of industry are relaxed and his health undermined; and thus, after no very long period, he finds himself so inferior to what he was, as to more than counterbalance any advantage to him of good times over bad.

Thus it is by no means paradoxical, that the temptations to crime which are incident to destitution, may prevail during a season of great prosperity, and with a certain class may be increased in pretty exact proportion to the magnitude of the cause to which we are in the habit of looking for their diminution.

These remarks, it is plain, have no application to the large portion of the working classes who make a better use of their advantages. But the prevalence of widespread suffering, at every fluctuation of commerce which lessens for the time our prosperity as a nation, shows that the power of equalizing their command over the comforts of life, acquired by laying something aside for a 'rainy day,' to use their own expression, is far from being so widely diffused among labouring men as could be wished. Perhaps, if the example of prudent self-denial set them by their superiors made a nearer approach to being universal than it now does, the humbler classes would give their friends less cause to mourn over their improvidence.

At the close of my first circuit, in the spring of 1820, Mr. Reader, one of our seniors, kindly took me back to London in his carriage. During the journey I had much profitable conversation with him on subjects connected with our profession. He was a man of close observation and great sagacity, and his remarks made no slight impression on my mind. Speaking of the immense numbers of prisoners charged with trifling offences, whom he had seen in the dock at Warwick, during his long career at the bar—'Society,' he remarked, 'is injured by taking legal notice of any offence which is not visited with transportation; the effect of a short imprisonment is, so far as concerns the deterring of the offender and his associates, as transitory as the punishment. Thus, the good which you produce is soon at an end, but the evil is permanent; the prisoner is a degraded man, a member of the criminal class, who alone will countenance him, and with whom he must stay, will-he nill-he.' He then went on to describe the treatment which in his younger days was applied by John Bull, *in propria persona*, to the less heinous class of offences, such as petty larcenies, robbing of orchards and gardens, what we now call malicious trespasses and the like. These consisted of applications of Lynch Law in its milder forms, which, nevertheless, were sharp enough; including the stocks, a sound horsewhipping, or, in extreme cases, a series of immersions in a horsepond, assuredly not selected for the purity of its waters. On the whole, he preferred this state of things, however irregular, to the modern course, because it did not sever the connexion between the wrongdoer and the honest part of society; and consequently did not, as at present,

deliver him bound hand and foot into the power of hardened criminals.

To enumerate and to weigh the contending advantages and disadvantages which might have flowed from reducing my friend's theory to practice, would require, if not a treatise, at the least a chapter. I have often reflected upon it, and I have arrived at the conclusion, that if the alternative lay between short imprisonments and impunity until the point of transportation was reached, I should be inclined to vote on the side of impunity. But the principle involved in the opinion pronounced by Mr. Reader, legitimately extends thus far only—that it is not for the public benefit to drag an individual out of his position as a member of the well-conducted portion of society and thrust him into a degraded class, unless you assume a permanent control over his conduct. In Mr. Reader's day that was done very effectually, so far as the home country was concerned, by transportation to the colonies; from whence, as a rule, the convict did not return. This remedy we have now lost, and if, when we set the law in motion, we are to seek permanent relief, we must discover other expedients. For myself, I perceive none but in sending the young to reformatory schools, there keeping them until they are well trained in habits of industry and general good conduct, and then procuring them employment under watchful supervision; and as regards adult offenders, in sending them to prison, and there giving them a similar training, *mutatis mutandis*, to that afforded to their younger brethren. But as old ways of thinking and old habits are harder to change than those which are not inveterate, I would place them under the alternative of either remaining prisoners in perpetuity, or working themselves out of gaol by their merits. Thus we should bring to bear upon them the two motives of hope and fear, each urging them onwards in the course towards reformation; each motive existing in a state of great intensity. Those who have never been deprived of personal freedom can but feebly realize the pangs of incarceration; but these, when continued beyond a short period, are to men of ordinary disposition hardly to be endured. Some criminals, however, are so constituted as to resist the operation of both these motives. Probably, in their cases the suffering caused by imprisonment is far less intense than with the majority of mankind.

CHARGE OF APRIL, 1848.

THIS Charge was delivered on the Friday following Monday, the 10th of April, 1848, a day which will be ever memorable in the history of this country, for the demonstration made by the metropolis in support of the laws and of order, called forth by an assemblage of Chartists on Kennington Common, intended by those who convoked it to lead to great, if not to violent, changes in the Constitution.

After remarking on the heavy calendar before him, the state of which some might refer to that pressure on the means of subsistence which all had witnessed, and too many had felt, the Recorder proceeded as follows :—

It is, however, reasonable to hope, with a feeling of confidence almost amounting to certainty, that the pecuniary distress under which all classes are suffering will gradually pass away. We have often had to bear up against similar trials, and we know by experience that they are not uncommonly succeeded by periods of high prosperity ; and when I reflect on the patience with which every class has borne its burdens, and especially when I reflect, as I do with admiration, on the fortitude displayed by that on whom national vicissitudes press with the greatest severity,—I mean the labouring class,—I cannot but feel that such patience will be followed by its appropriate reward, and that industry will, before long, cease to lack the means for its exercise.

Gentlemen, we may gather confidence from the noble bearing of the people under another trial which has come upon us in the midst of our pecuniary difficulties—a trial which has put to proof the soundness of our political principles—which has dispelled, I trust, for ever, all doubt of our devoted attachment to social order—which has displayed to the world the vanity of their expectations, who beguiled themselves into the belief that Englishmen would exchange that rich inheritance of political Institutions, handed down to us by our forefathers, for specious novelties, foreign to our manners, to our habits, to our ways of thinking, and unassayed by the touchstone of experience.

Gentlemen, we know the danger of losing substantial benefits while grasping at shadows. The great body of our countrymen are conservative in the best sense of the word. They do not believe institutions to be good because they are old, but they do believe that many institutions are old because they are good; or, in other words, that their preservation for ages raises a fair presumption that they have been found adapted to the wants and wishes of the nation by which they have been thus respected. Presumptions, however, are not conclusive. 'Stand,' says Lord Bacon, 'on the old way, and then look about for the true and right way.' Our desire to keep what we have, must not be the offspring of cowardice, nor must it blind us to the necessity for improvement. Nations cannot be stationary,—they must either advance or fall back; but let them beware of moving onward at a pace too rapid for safety. If we hold fast by the principle of conservation, combined with that of improvement, we have, I devoutly believe, everything to hope, and little to fear. The tide of English progress is like that which flows 'from the Pontic to the Propontic Sea;' it 'knows no ebb.' We often creep along with wearisome tardiness, but what we gain we keep. Permanent conquest, and not transient victory, is the characteristic of our political advancement.

Let us love, and admire, and ardently cultivate 'Liberty, Equality, and Fraternity;' they are great names for great things. But they must be clearly understood. By liberty I understand full protection to every man who is doing right—protection in his person, in his property, and in his reputation. But I do not understand, and I am sure you do not understand, by liberty, freedom to do wrong. Never, let us hope, will Englishmen permit the power of doing wrong without punishment, to enter into their notions of liberty. Every man 'sitting under his own vine and under his own fig-tree, with none to make him afraid,' presents a delightful picture of civil liberty. But every man plucking his neighbour's grapes, and hewing down his neighbour's fig-tree, is a type of anarchy; and anarchy is the father of despotism.

Equality is a great good; but what ought to be signified by this watchword—equality of stature, of strength—a similarity in the physical condition of one with another? Against that equality 'the Eternal hath set His canon.' We

have only to open our eyes to be convinced that the very dream of such an equality is absurd. Can we, then, find equality in the inner man? Assuredly not, for we have only to open the eyes of our understanding to be convinced that differences in the outer man, great as they are, count as nothing in comparison with the vast inequalities resulting from diversities in the structure and cultivation of the mind, giving to one human being superiority over another to an extent absolutely immeasurable.

Now, when we know that it is to the powers of body and mind that property owes its existence, and when we see in what very different proportions it has pleased God to dispense these faculties among us, His creatures, is it reasonable to believe that, while one individual differs so much from another in his capacity for creating property, it can fall within the true scope of legislation to take away from the large earnings of the skilful, the industrious, and the provident, to make up the deficit of the inexperienced, the slothful, and the prodigal? Law, Gentlemen, can do much; but fortunately for the existence of society it has always been found impotent when seeking to do this—impotent, I mean, to establish a permanent condition of affairs in which such a principle should bear sway. Temporary mischief to an awful amount has been wrought by efforts to reduce such doctrines to practice; and may be wrought again to the distress and misery of unhappy nations made the subject of such monstrous experiments.

But there is an equality which has been better understood and more thoroughly attained in our own favoured country than in any other portion of the globe—one which I trust succeeding generations will vie with each other in holding sacred. I speak of that equality before the law which recognises no distinction of ranks—that by which the poor man's right to his cottage stands as secure from invasion as the rich man's right to his mansion. This equality is real; every other is but 'a mockery, a delusion, and a snare.' Here, then, is a privilege to be most earnestly coveted. Let us each, in our respective stations, do our best to make it as perfect in its practice as it is noble in its theory.

With regard to the equality dreamt of by the Socialist, I will not assert that ages of improvement may not so raise and purify human nature as to bring us at last to such a consum-

mation; but if we are at present on the road towards this Utopia, all I can say is, that the distance over which we have yet passed is so minute as hardly to be capable of appreciation; and that our progress (if progress we make), is so very slow, that it requires more science than I possess to ascertain whether we are in motion or at rest.

Gentlemen, I honour the principle of fraternity, but before I surrender my sympathies to the cry, I could wish for permission to verify the genuineness of the article offered for acceptance. That fraternity which teaches us to look favourably on our brother's claim to some share of our abundance is excellent; but that which fixes our attention on what we may demand from him to add to our own store is worthless; unfortunately, however, poor human nature is sorely tempted to think much of rights and but little of obligations. In a healthy state of morals, the minds of men will be more frequently impressed with what they owe to others than with what others owe to them.

I trust, Gentlemen, you will excuse my dwelling on these three watchwords. To me it seems important neither to receive them in a spirit of fanaticism, nor, on the other hand, to give them a scoffing rejection, but to extract for our use whatever of good they contain, taking at the same time especial care to avoid all that is deleterious.

Gentlemen, let us this day, in the performance of our official duties, give proof that we know how to apply the principles couched in the three words, Liberty, Equality, and Fraternity. By the favour of Providence we are placed in the middle ranks of society. We do not abound in wealth, we are not decorated with titles, nor are we dignified with high offices; but thus we escape many temptations to which others are exposed, who stand upon our right and upon our left, above us and below. More than all, let us not forget that having 'neither poverty nor riches, but fed as we are with food convenient for us,' we have been preserved harmless from the temptations to which our less favoured neighbours have yielded, not perhaps from our greater virtue, but from our happier position.

We will then respect the liberty of those whose fate is in our hands by ensuring them the benefit of all the safeguards

with which the law of England has mercifully surrounded the accused. We will remember, that poor as they may be in property or even in character, they are our equals in rights. And, Gentlemen, bearing in mind that we stand not by our own strength, let us prove our fraternity with the fallen, by exercising our painful functions with all the mildness which our sense of duty will permit.

For myself, Gentlemen, I can say with truth that, not often indulging in the strain of observation which I have now addressed to you, I could not, on this day, withhold the expression of my feelings. 'Out of the fulness of the heart the mouth speaketh.'

CHARGE OF OCTOBER, 1848.

THE Recorder began his Charge to the Grand Jury by stating that he would avail himself of the opportunity afforded by there being less than the usual amount of ordinary business, to lay before them the results of such steps as he had taken, for the purpose of carrying into effect, so far as the law would allow him, and the means at his disposal would permit, the great principle of reformatory treatment. He addressed himself with confidence to the gentlemen whom he saw before him, as representing the inhabitants of this large and important town, because Birmingham had given a memorable sanction to the reformatory principle, by causing a vast prison to be erected at great, but not unnecessary expense, in which he was gratified to observe that no arrangements appeared to be wanting for facilitating the adoption of reformatory discipline in its most improved methods. He had had the pleasure of carefully inspecting this building, now nearly completed, and he could not forbear to express his admiration of the sacrifices which had been made by the rate-payers, and made cheerfully, he was informed, for so excellent a purpose. He trusted that in the end this would be found to be a wise outlay; that this liberality would prove true economy even in a pecuniary point of view, without reference to the higher interests involved in the reformation of offenders. It was probably known to most of them, that for a period of seven years, beginning early in the year 1841, he had thus acted with regard to juvenile offenders:—that when there was ground for believing that the individual was not wholly corrupt—when there was reasonable hope of reformation—and when there could be found persons to act as guardians kind enough to take charge of the young convict (which at first sight would appear to present a great difficulty, but which in practice furnished little impediment to the plan), he had felt himself justified in at once handing over the young offender to their care, in the belief that there would be better hope of amendment under such guardians than in the gaol of the county. And

he was happy to say that the intelligent officer at the head of the police, informed him that a much greater number so disposed of were withdrawn from evil courses than of those who, having no such advantages, had been consigned to prison.

‘ We take (said the Recorder) as much care as we can not to be imposed upon, either by too sanguine a hope of amendment, or from imperfect information as to the results actually obtained. At unexpected periods a confidential officer visits the guardian, makes inquiries, and registers the facts of which he is thus informed, in an account which has been regularly kept from the beginning.’ The results he would now submit to them. The number of young offenders so disposed of was 166; of these the conduct of 71 was good. Of the greater number of that 71 the good conduct had been of such long standing that he was warranted in assuming their reformation to be complete and assured. The conduct of 40 was doubtful. That was said partly because it had not been quite consistent, and partly because some of the lads had passed out of sight, and therefore could not be spoken of with certainty. Of 53 the conduct had been bad, and two were dead. He might observe that he had felt it his bounden duty to take care, when a youth so privileged had returned to his evil ways, and was again convicted before him, that his punishment should be such as to show that it was from no weakness, from no mistaken indulgence, from no want of resolution on the part of the Court to perform its duty, that a course of mildness had been pursued, but that such a chance had been offered because it had been found by experience not only merciful towards the individual, but profitable to the community. In those instances, therefore, in which the plan had failed, the safety of the public demanded a severe penalty. Nor was it less demanded for the permanent interests of the prisoner himself, because assuredly there was no indulgence more fatal to him who received it than a series of light punishments, which familiarized his mind to degradation, and left him in a path which would lead him, step by step, to the gravest crimes, and consequently to the heaviest inflictions known to the law.

The kindness of the Directors of one of the most valuable institutions in the county of Warwick—he meant the asylum

at Stretton-upon-Dunsmoor—had enabled him to send there certain of the boys whose cases were more peculiarly deserving of benevolent care. Of this permission he had gladly and gratefully availed himself; but it was limited, he was grieved to say, by paucity of funds. These funds were raised by private subscription, and it was mortifying to be forced to state, that, although the asylum had been established nearly thirty years, and its success had been undeniable, it had still to struggle on with a very narrow income. From the report presented to the County Magistrates in Quarter Sessions during the current year, and which gave the results of the last year, he found that there had been considerable improvements made on those obtained during the earlier years of the institution; doubtless caused by the greater knowledge and experience of the conductors of the establishment, and by that improved standard of moral feeling in the asylum, the slow but sure reward of the faithful and earnest labours of benevolence, of which it had now been for more than thirty years the scene. The gentlemen of the jury were aware that the asylum is not a prison, and that there are no physical means whereby the boys might be restrained from leaving it. As a matter of course, therefore, it followed that the means employed could only operate upon the mind and the heart, a circumstance which, although at first it might create its difficulties, was probably no slight cause of ultimate success.

From the year of foundation, up to 1827, the proportion of reformed was only 48 per cent.; that is to say, when 100 boys were received, 48 were reformed, and 52 were cases of failure. But in 1843 the improvement was such that the reformed amounted to 56 per cent. In 1844 they reached 58; in 1846, 60 per cent.; and in 1847 the reformed had reached the proportion of 65 per cent. He was sure the Grand Jury would agree with him that this was a very encouraging state of affairs. It is one of the happiest incidents of good things, that they yield readily to further improvement: and every reason for hoping that the ultimatum had not yet been reached, was strengthened by the results of another institution, to which he would now call their attention.

During the last month he had visited the reformatory institution at Mettray, near Tours, in France, which had attracted

the attention of philanthropists by the magnitude and success of its operations. At Mettray, which was called by the Founders an Agricultural Colony (although not exactly in the English sense of the term), there were 500 young offenders. It had been in action for nearly eight years, beginning with a small number, gradually increased. It had already sent out 400 youths, of whom the reformed bore a very large proportion to the unreformed. Like Stretton-upon-Dunsmoor, it was an improving institution, and, from the best judgment he could form, the present rate of reformation amounted to 85 per cent. It was difficult to speak with accuracy, but he believed that he had estimated the number rather under than over the just amount. This institution had its origin in 1839, and was due to the exertions of two French gentlemen eminent by rank, but far more eminent by their talents, their unwearied zeal, their large benevolence, and by the great sacrifices which they had made under the circumstances which he was about to relate.

One of these gentlemen (M. Demetz), he was proud to say, was a member of that profession to which he himself belonged, and twenty years of honourable exertion had placed him on the Bench. By travel in England and America he had acquired a knowledge of all that had been done for the reformation of criminals in those countries. To this knowledge he united a kind heart. He could not dismiss young offenders from the bar and straightway forget their existence; his mind followed them to the gloomy abode where they were to remain for years; some for very many years, the terms of imprisonment in France being not uncommonly of great length. These thoughts so wrought upon his feelings that they forced him to resign his office of judge, and to devote himself to the formation of the admirable institution of which he is at the head. In this great undertaking he was joined by the Vicomte de Bretignères de Courteilles, who, being the proprietor of land near Tours, permitted the gratuitous use of it for the purposes of the institution.

These two friends formed a plan, and laid it before their countrymen. It was eagerly adopted, and they raised large subscriptions (one gentleman contributing at various times sums amounting in the whole to 12,000*l.*); they also obtained aid

from the general revenues of the State, and from those of many of the Departments.

Being thus supplied with funds, their next step was to procure trustworthy assistants.

To that end they established a school of well-disposed youths, from respectable families, who showed capacity, and a desire for the vocation of teacher. 'And excellent indeed,' continued the Recorder, 'has been the selection and the training of these young persons. The Founders have breathed their own earnest benevolence into the hearts of their coadjutors.'

'Seldom have I felt so deeply interested as in the hours I spent with these amiable and most intelligent young men. Their devotion to their employment, their perfect knowledge of all the principles on which the institution is founded, and of the best means for carrying these principles into effect; their enthusiastic attachment to the generous men to whom France and the world owe this noble establishment; the kindness which they evinced in their demeanour towards their wards, and the grateful spirit in which their notice of these poor lads was received, left me no room to doubt that I was among realities, not surrounded by mere shows and forms; and that the execution was worthy of the plan, and of the Christian spirit which had given it birth. On the other hand, I could not but feel how much of the success attained depends on that rare combination of large views, skill in administration, and pure philanthropy, which give life and soul to the enterprise!'

One principle of the establishment was, that the wards committed to its care should be distributed in families, as they were called. The founders erected several houses, one for each family—simple structures without ornament—in the building of which a strict economy was observed. The ground floor was used as a workshop. The head of the family (which consisted of forty wards), was a steady, intelligent man, carefully chosen, who was called the Father, and who was usually conversant with some one of the trades or occupations in which the wards are employed. Each family was divided into two sections, and each section chose one from its own body to preside over it, called an elder brother, who became entitled to certain privileges and advantages, which made the office an object of emulation. He (the Recorder)

was informed by the Superintendent that he was often surprised at the sound judgment displayed by the lads in their choice.

Having then made ready for the reception of the wards, the Founders resolved to begin carefully—not by adopting a great number at once, but selecting from the various prisons of the country (which they had the permission of Government to do) the most towardly among the young prisoners; in order that the first experiment might be made under the most favourable circumstances.

They went to various prisons, and some affecting incidents occurred which he must not pause to relate.

The feeling excited in the minds of the youths by the substitution of kindness for severity produced very hopeful effects. They were taken to Mettray, and there subjected to a discipline which, while it had the warmest benevolence for its origin, was directed by the soundest judgment. The object had been to make them honest men, capable of self-control and self-support, and not merely to mitigate their present lot. Still less was it any part of the system to elevate, because they had been offenders, these unhappy beings to a higher rank than that to which they were born. By kindness the desire for improvement was implanted in the mind, and by a well-devised system of government and occupation, the ward became a most important agent in his own amendment. Such was the influence produced, that a very large amount of labour had been performed with cheerfulness, and habits of almost unremitting industry had been thus created and confirmed. Mettray is no scene of weak indulgence. Its only luxury is kindness!—that true kindness, that *only* true kindness which aims at the permanent advantage of its object. In accordance with these principles, the food, though ample, is of the plainest description, and of a character similar to that of the peasantry of Touraine, in which province Mettray is situated.

Full provision is made for the care of the sick, the more so that, in the choice of the wards, a preference is given to those whose health has suffered from confinement. And it had in some cases occurred that youths were brought at once to the Infirmary, and had only left it to be laid in their graves. Funerals were simple, as it was right they should be; but these

last offices, in which the whole body assisted, were so conducted as to make the survivors feel that they were not outcasts, but in death as in life the objects of affectionate care. The contrast between the treatment which the remains of their deceased companions received at Mettray and in prison had been found to teach a salutary lesson of self-respect.

In France, as probably the jury was aware, there was a religious order called 'the Sisters of Charity : ' excellent women, who devoted themselves to the care and comfort of the distressed. The Founders of Mettray availed themselves of the services of nine of the Sisters, who had made the Infirmary their sitting-room ; it was a spacious and airy apartment overlooking the garden, everything being in the most perfect order ; some of the convalescent were walking about or making lint for the surgeon, others were variously employed, and two patients, who were evidently suffering, lay in their beds ; they were perfectly calm,—tranquillized, no doubt, by the cheerful, yet quiet scene in which they bore part. The kitchen, too, was under the care of a certain number of the Sisters, and the food, although that of the neighbouring poor, yet possessed an advantage in the skill employed in its cookery, and the cleanliness which pervaded all the culinary operations.

By far the greater number of the wards were engaged in agriculture ; and, in fact, the whole of the hard labour of the institution was performed by boys, who must be under the age of sixteen when admitted—many of them not being, in truth, more than seven or eight. Others were occupied in handicraft works, such as in making clothes, in fashioning wooden shoes, or in making leather shoes for Sundays, in constructing agricultural implements, and in cabinet-making and carpentry. It might be supposed that as there was so much labour there would be little opportunity for attending the school. That was certainly true, as the time allotted to instruction in school, much of which was devoted to religious teaching, was only some ten hours in the week. But a desire to learn had been created, and consequently the time was made the most of, and the amount of elementary knowledge acquired was by no means slight. Nor was their education pursued in school alone ; it went on from morning to night. Their labours in the field or workshop were made instructive, partly by the perfect manner

in which the youths were induced to perform their tasks, and partly because their employments furnished occasions eagerly seized by the teachers for affording information to the young labourers. Thus they acquired a knowledge of higher value to them than any amount of literature and abstract science—knowledge by the aid of which they might honestly maintain themselves in after life.

All would prize, as he, the Recorder, prized, the admirable training which these poor youths received. ‘We are told,’ said he, ‘not simply to teach a child the way he should go, but to *train him up* in it, and his remaining in the true path is not promised merely to his knowledge, but to his habits, his principles, and his aspirations.’ The religious instruction is confided to a Roman Catholic clergyman. Protestant wards, he believed, there were none. In that part of France Protestants were few, and filled a social position different from that in which criminals are usually found; but if any should enter the institution, he felt sure that the principles of toleration would be most liberally applied to their case. The rewards were well chosen and judiciously distributed; the punishments were not degrading; principally they consisted in short periods of confinement.

But even the admirable discipline and anxious watchfulness of Mettray sometimes failed of success. There are natures which pertinaciously resist all good impressions; others in which good impressions fail to produce the only valuable fruit, good conduct. In both cases it had been thought necessary, for the protection of the well-disposed, to send the incorrigible ward back to prison.

‘His expulsion,’ said the Recorder, ‘is an affecting solemnity. The *Gens-d’armes*, who are the officers of justice, arrive—the whole community is assembled. The Principal recounts the exertions which have been made for the amendment of the culprit, his repeated offences, the gradual extinguishment of all hopes of his reformation, and the dire necessity for abandoning him to his fate. He is then reclothed in the prison dress, his hands are pinioned, and he is led away from Mettray, never to return.’

But this, which is the capital punishment of the institution, is becoming rare. Improvements in the method of train-

ing, greater aptitude in the teachers, and, above all, a high moral tone pervading the community (the slow creation of years), have greatly lessened the number of expulsions, and will, I have no doubt, still further diminish it. The year 1847 produced only two.

But, although Mettray had been unable to reform these boys, they were generally found to behave better on their return to prison than those who had not enjoyed their advantages, and a few among them were known to have conducted themselves well, long after the term of their imprisonment had expired. 'One most unhappy case,' continued the Recorder, 'presents so striking an instance of that inability to make our conduct answerable to our convictions (of which we all must be conscious in a greater or less degree), that I cannot forbear from narrating it. Perhaps it may serve to show that even the most incorrigible have claims on our sympathy. A youth of a poor but ancient and noble house in Brittany came to Mettray. His father had through life sustained all the essential dignity of his rank by honest industry; cultivating with his own hands the last of his paternal acres. But the disgrace which the son had brought on his name had crushed his spirit. Even at Mettray the lad could not refrain from repeated acts of theft, and, when confined in a cell, he still found opportunities of stealing. He was expelled. After his removal to prison, a letter of reproach was written to him by one of his family.

'Do you know,' said the writer, 'that your aged father sits with his head sunk on his breast, and that he has never raised it since the day of our dishonour?' The boy read the letter—he felt the blow—he pined away, and died heart-broken!'

The Recorder then adverted to the successful cases. 'Success,' he said, 'was not lightly predicated. Each youth sent out was not only consigned to a master, by whom he was employed, but placed under the kindly supervision of some gentleman in the neighbourhood, as his patron. From these two sources information was from time to time obtained, by means of returns to searching inquiries. Nor was the connection between the youth and his *Alma Mater* (as Mettray might justly be called) extinct. On the contrary, Mettray still remained his place of refuge, and whenever the accidents of life deprived him of employment, he could return and be received.'

Four hundred had been sent out after an average residence of three years. Of many the time of probation had not been sufficient to enable the Directors to speak with confidence. On the other hand, the institution was in course of improvement. Forming the best judgment he could on the subject, aided as he had been by the most unreserved communication on the part of the Directors and teachers, he estimated the proportions, as he had before stated, at eighty-five per cent. of reformed against fifteen of unreformed; including in the latter class as well those returned to prison as those who failed after being placed out in employment. If the members of the Grand Jury should study the subject, it was probable that they would find claims made (no doubt in all sincerity) to even greater success as regarded the results of other systems. But he doubted the accuracy of the estimates. The means of arriving at a just result depended on a full knowledge of what was the conduct maintained after the reformatory discipline had been withdrawn, and he knew that the want of complete and trustworthy information had been a most prolific source of error.

It remained to show at what cost the good at Mettray is accomplished. The expense was at present enhanced by the large proportion which the officers (including under that description all but the 500 wards) bear to the whole community, they being 120 in number. As the institution extends the number of its wards, this proportion will be lessened, although, to insure a continuance of the triumphant success which has been achieved, it must still be large. By a severe, although enlightened economy, the cost of food and clothing had also been reduced, and might be found susceptible of still further reduction. Dividing the cost of the whole establishment among the wards, and also throwing into the account the incidental expense just adverted to, of the visits of wards who, having left Mettray with credit, may return for a time from want of employment, the gross cost per head is 20*l.* per annum; but this sum is materially diminished by the produce of labour, which averages a value of 8*l.* for each, so that the net cost per annum is only 12*l.*; and taking a ward as remaining three years, the cost for the whole term is 36*l.* To this must be now added the cost of failures, which will be found by calculation to amount to

about 6*l.* per head, when divided among the eighty-five per cent. who are reformed. Thus it will be seen that the cost of reformation at Mettray is about 42*l.*; considerably exceeding the cost at Stretton-on-Dunsmoor, which appears by the last Report not to be more than 31*l.*

Probably, however, the enlightened magistrates at the head of this latter institution would, if their means permitted them, gladly see that cost raised to the standard of Mettray, if at the same time they could raise the proportion of reformations in the same ratio; that is, from sixty-five to eighty-five per cent.; knowing, as they well know, that the twenty per cent. of difference must be furnished by wards whose cases are of the most difficult treatment—cases which would probably only yield to the greater power set in motion at Mettray by its more liberal staff of officers.

But whatever might be the comparison between Mettray and Dunsmoor, he wished the Grand Jury not to forget that the borough was paying 20*l.* per annum for every one of its prisoners at Warwick; and that, notwithstanding the union of skill and kind feeling of which the Warwick gaol had the benefit in its management, it did so happen, from causes beyond present control, that its inmates were more likely to advance further into crime than to be reformed. And if it should be said that even 12*l.* per annum is much to pay for the benefit of those who are in hostility to the laws of God and man, the answer, as far as pounds, shillings, and pence are concerned, is that offenders must be maintained either in prison or at large; and that, even if the expense of reformatory training were greater than that of training to deeper corruption, it would be true economy to prefer the former to the latter. But was it more expensive? In addition to what he had stated as to Warwick, he would refer to the experience of Liverpool.

A petition was presented to Parliament by the magistrates of Liverpool in the session of 1846, which among other important matter set forth the cases of 14 young offenders, fairly chosen, by which it appeared that these 14 persons had been frequently committed to prison, none less than eight, one 23 times.

The cost of each of these 14 youths, arising from trials, &c.,

was 63*l.* 8*s.* Not one of them was reformed. Ten of them were transported, the cost of which, and their support in penal colonies, must be added to the other sums. The cost of transportation in each case would be about 28*l.*; that of punishment and residence abroad at least 54*l.*, making an additional sum of 820*l.* which these youths cost the country. The grand total being 1707*l.*, or, on the average, 121*l.* for each individual. So much for the old system in prison. Now, supposing these 14 persons had not been apprehended, but had been suffered to run an uninterrupted course of crime, it would be found, when facts came to be investigated, that if an offender had been costly under the hand of the law, he was far more costly when thrusting his own hands at will into the pockets of her Majesty's subjects. It was hardly possible to conceive of a treatment so extravagant as to equal in its expense the spoliation committed by thieves at large.

But it was painful to look at a subject of such grave importance merely in reference to the question of pecuniary amount. The Jury would not hesitate to agree with him, that to save one human being from a life of guilt was an achievement that could not be estimated in silver or gold.

There was only one other point to which he would ask their attention. From a communication with which he had been favoured by M. Demetz, he had found that since the late Revolution, there had been a change in the institution at Mettray. The Republican authorities had certainly not withdrawn the contributions of the Government, but its funds were aided before that event, not only by the manufacture of articles for their own consumption, but for sale elsewhere; and, except for the Revolution, he was informed that there would have been for the current year a net income from that source alone of 1000*l.* But the new Government had been of opinion that such a sale was an undue interference with the honest labourer—an opinion also held by many eminent persons among ourselves, to whose authority he should be disposed to attach as much weight as ought to be given to any authority on a question of principle.

It was difficult, however, to understand how the public at large would be benefited by maintaining persons in idleness, the produce of whose labour might either suffice for their sustentation, or at all events diminish its burden. On whom does the

support of prisoners fall but on the contributors to the taxes? Can it be advantageous to them to defray an expense of which the whole or a part can be saved? Again, if it be advantageous to the community to maintain any class at the public expense, what is to limit that class to prisoners? What is there in the fact of a consumer being a criminal and in confinement, which makes it desirable that he should cease to produce? If it be desirable for the public good to withdraw some portion of the community from competition with the rest, in the struggle for the means of subsistence, why not select this favoured body according to merit? Such relief from the duty of self-maintenance savours rather of reward than of punishment.

Probably the error may arise from the inaccurate use of language. The labour of prisoners, it is said, interferes with honest industry—as if it were labour itself, and not the gains of labour, which is the object of desire. Now, to keep any in idleness, is to make it necessary that all who work should submit to some subtraction from their gains, in the shape of taxation, for the purpose of feeding the idlers. But is the honest labourer benefited by performing his task unaided, and then dividing his earnings with another?

The Recorder concluded his address as follows:—‘I have thought myself justified in occupying your time with the foregoing remarks, because I am persuaded that a deep conviction of the justice and efficacy of reformatory punishment must be widely diffused before the legislature would be warranted in making extensive changes in that direction.

‘The proceedings of criminal courts would lose much, if not all, their value—nay, they might have an effect absolutely mischievous, if they did not satisfy the public sense of justice.

‘Too many are still of opinion that kindness to offenders is cruelty to the innocent, by depriving punishment of its terrors. Doubtless it may be so abused; indulgence to the vices of criminals would be cruelty to both parties. But that wise benevolence which guides all sound reformatory discipline is the kindness of the surgeon, who shrinks not from inflicting any amount of pain essential to the cure, but who does not willingly go beyond that necessity.

‘Providence has ordained that the change from evil to good is not to be wrought but at the price of suffering often re-

peated and long endured. And if the selection were left to the criminals themselves, experience justifies the assertion, that, whatever might be the choice of the young offender, few punishments, indeed, would not be preferred by the veteran in crime to that of passing through a full course of reformatory discipline.'

When the Grand Jury were dismissed, they handed to the Clerk of the Peace a paper, in which, after expressing their great interest in the subject of the Charge, they added 'their hope and confidence that the Recorder would continue to direct his attention to a subject so deeply affecting the moral interests and well-being of society.'

SEQUEL.

The *Colonie* at Mettray has so frequently been brought before the world of late years, in the narratives published by many of its innumerable visitors, that a few words to bring down its history to the present day, will suffice here.

The institution has increased in extent and importance in proportion as the system it embodies has gradually been developed. The principles upon which it was founded, and whose operation I had the opportunity of observing in 1848, and again in 1855, have now been tested, and their soundness irrefragably proved by the experience of more than seventeen years.

The following letter from my esteemed friend, M. Blanchard, Inspecteur de la Colonie, and next in command to M. Demetz, written in reply to questions transmitted by my daughter, contains very important statistical details, and conveys the latest information I possess respecting the institution:—

Mettray, le 8 Février, 1857.

MADemoiselle,—Monsieur Demetz a reçu votre lettre, au moment de monter en voiture, pour se rendre à Rennes, à une invitation du Premier Président de la Cour, afin d'organiser les collectes de Jury avec Messieurs les Conseillers, Présidents d'assises de cette Cour Impériale. Vous voyez que notre cher Directeur ne laisse échapper aucune occasion de réchauffer le zèle en faveur de Mettray. * * * *

J'ai donc l'honneur de répondre à vos questions, et dans l'ordre où vous avez bien voulu me les poser.

1°. Le nombre des jeunes détenus reçus dans notre établissement depuis sa fondation jusqu'aujourd'hui est de 2150.

2°. Le nombre des enfants décédés depuis l'origine s'élève à 139, ce qui nous donne pour la mortalité une moyenne générale de 15 pour mille, malgré l'épidémie de fièvre typhoïde qui a sévi l'année dernière à Mettray, et qui nous a enlevé 16 enfants. Cette moyenne de 15 pour mille est au-dessous de celle de l'année, dans l'intérieur de la France bien entendu. La statistique de l'année accuse 20 pour mille dans les hôpitaux de l'empire, et tout le monde sait que nos régiments sont composés d'hommes choisis par les conseils de révision.

Nous établissons ainsi la moyenne de la mortalité pour arriver à la plus grande exactitude. Nous divisons toutes nos journées de présence de chaque année par 365 pour obtenir la population moyenne de l'année, et c'est ce dernier chiffre que nous mettons en proportion avec le nombre des décès.

3°. Le nombre des enfants présents est aujourd'hui de 700, c'est le chiffre maximum.

4°. Le nombre des agents est de 60, sans y comprendre les élèves de l'Ecole Préparatoire, au nombre de 18 aujourd'hui.

5°. Nos récidives depuis la fondation de la Colonie, c'est-à-dire dans une période de 17 années, sont d'une petite fraction au-dessous de 10 *pour cent.* ; et nous espérons dans un avenir peu éloigné les voir descendre à 9 *pour cent.* seulement. Ce résultat sera dû à ce que la moyenne du séjour des enfants à Mettray est plus élevée que dans les commencements. Ainsi, au lieu de renouveler notre population par *tiers* comme autrefois tous les ans, le nombre des jeunes détenus jugés jusqu'à 20 ans devenant chaque jour plus considérable, nous arrivons à nous recruter par $\frac{1}{4}$ et bientôt par $\frac{1}{8}$, ce qui nous permet d'agir plus longtemps sur le cœur de nos enfants, de leur apprendre complètement une profession qui les met à l'abri de la misère, et surtout qui leur évite de recommencer un nouvel apprentissage.

Vous verrez par le tableau ci-joint, qui vous offrira sans doute quelque intérêt, l'âge des récidivistes, la durée moyenne de leur séjour dans la colonie, et le nombre de ceux qui ont été repris pour vagabondage seulement.

Veuillez, Mademoiselle, &c., &c.,

BLANCHARD.

Sur 109 colons récidivistes.

Etaient âgés de 12 ans.	1	Ont passé moins d'un an à la Colonie	2
" " 13 "	1	Ont passé 1 an	5
" " 14 "	2	" 2 ans	31
" " 15 "	4	" 3 "	29
" " 16 "	7	" 4 "	26
" " 17 "	14	" 5 "	10
" " 18 "	18	" 6 "	5
" " 19 "	22	" 7 "	1
" " 20 "	15		
" " 21 "	15		
" " 22 "	3	Ont récidivé dans le 1 ^{er} trimestre	
" " 23 "	3	après leur sortie de la Colonie . .	10
" " 24 "	3	Ont récidivé dans la 1 ^{re} année . .	28
" " 25 "	1	" " 2 ^e "	39
	109	" " 3 ^e "	17
		" " 4 ^e "	6
		" " 5 ^e "	3
		" " 6 ^e "	4
		" " 7 ^e "	1
		" " 8 ^e "	1
		21 Colons ont récidivé pour vaga-	
		bondage seulement	109

It will be observed that the proportion of officers to colons has lessened since my visit in 1848, but the diminution has been effected by degrees, and has not, I believe, been followed by any unfavourable consequence. This may be accounted for by the fact that public opinion in the community, which has always been enlisted on the side of right, has, by the great increase in numbers, acquired such potency as to exercise a strong influence over even the worst-disposed boys, and thus enable a few officers, compared with those required in the early years of the colony, to preserve discipline, and convey instruction. It must, however, always be borne in mind, that the efficiency of the masters is still secured by judicious selection and careful training in the school established at Mettray for that purpose. Indeed, such training is found to be so essential to the successful treatment of the colons that, serious evils having occasionally arisen from the employment as tradesmasters of individuals who had not been brought up in the *Ecole Préparatoire*, a department has been recently added to it, entitled 'Arts et Metiers,' which provides the requisite means of instruction for industrial teachers; and it is intended henceforth to admit no officer who has not been educated in the training school.

The cost per head (of the wards) seems to have been slightly lessened also since my visit in 1848; a curious fact considering the dearth of provisions which has prevailed in France now for several years. In some degree I believe this result to have been the consequence of gradual improvements in minute administration; by which the economy at all times anxiously strict, has been made even more perfect. Mainly, however, the effect must be due to the diminished proportional number of teachers to pupils, which it has been found possible to establish without injury to progress or discipline.

‘We were very recently informed by M. Demetz, that, including his quota of expense for officers, rent, instruction, food, clothing, and patronage after leaving the Colony, in short, dividing the expenditure of the whole Institution among the colons, three-quarters of a franc per day, or a trifle less than 11*l.* per year, is the cost of each, after deducting the average value of his labour.’*

In 1852, the Colonie sustained a severe loss in the death of M. de Courteilles; but though he, who had been regarded as one of its chief supports, was thus withdrawn, the efficiency of Mettray remained unimpaired. A more convincing proof than this could not be afforded of the sure basis upon which MM. Demetz and de Courteilles founded their noble institution.

The example of Mettray has called numerous reformatory schools into existence, and many owe their success to the excellence of masters trained in her *Ecole Préparatoire*. One of these colonies—Orfrasière—distant about twelve miles from Mettray, is indeed an offshoot from her, and was established by M. Demetz, in 1855.

During the flood of the Loire in June, 1856, the Mettray lads nobly distinguished themselves, as they had done on a like occasion before, by the important aid they gave in preserving the city of Tours from destruction; and by their generosity towards the sufferers. Their gallant conduct, and the moral effect produced by the discipline, zeal, and self-devotion they displayed, have been described by M. Mame, mayor of Tours, from whose Report on the flood, published in the *Journal d'Indre*

* *Mettray; its Rise and Progress. Irish Quarterly Review*, December, 1856.

et Loire, for November 20th, 1856, I quote the following extract:—

‘C’est ici, Messieurs, le moment de vous parler du concours qui nous a été si généreusement donné par la Colonie de Mettray.

‘Le 2^m^e Juin, dans la matinée, M. Blanchard, Inspecteur de la Colonie, vint, en l’absence de M. de Metz, nous offrir le concours de ses jeunes colons, concours que nous acceptâmes avec reconnaissance. Quelques heures après, au moment où la place de l’Hôtel de Ville était encombrée de curieux oisifs d’habitants qui hésitaient encore à aller travailler aux levées, on vit déboucher par le pont, musique en tête, armés de pelles et pioches, et marchant avec la précision d’une troupe militaire, 300 jeunes colons de Mettray, sous la direction de l’honorable M. Blanchard.

‘Ils étaient accourus à la nouvelle du danger qui nous menaçait, et après s’être reposés un instant, et avoir pris nos instructions, ils se rendirent sur la levée du canal, où ils établirent un chantier qui a pu servir de modèle pendant le reste de la journée du Lundi, pendant toute la nuit suivante, et pendant la journée entière du Mardi, 3 Juin.

‘Honneur à eux, honneur à cette belle institution de Mettray, qui régénère de jeunes gens égarés au point d’en faire des hommes d’élite !

‘L’arrivée de ce renfort n’avait pas été, pour nous, une bonne fortune au point de vue seulement du surcroît de bras qu’il nous apportait ; elle avait encore exercé sur la population une heureuse pression morale, et beaucoup de gens se décidaient enfin à aller au travail.’

The Municipal Council of Tours, in gratitude for the services rendered by the Colonie, caused a medal to be struck commemorating the event.

CHARGE OF APRIL, 1850.

GENTLEMEN,

NOT twelve months ago I felt called upon to address your predecessors on a subject which has given me great anxiety. I refer to the petitions and memorials which are from time to time sent up to the Secretary of State for the Home Department on behalf of prisoners convicted at our Sessions.

I am deeply penetrated with the consciousness that nothing but unremitting vigilance, both on the part of juries and of those who fill the judicial office, can guard us against the calamity of convicting the innocent; and I am further bound to admit that, in spite of the most jealous watchfulness, error can never be wholly excluded—such are the inherent defects of all human tribunals.

From this admission it follows that whoever is engaged in the administration of justice must feel himself indebted to every person, high or low, who furnishes him with the means of correcting the miscarriage of any case in which he has taken part. For myself, I may say that I should regard such an informant as my benefactor. Again, it sometimes happens that when the guilt of the prisoner is undoubted, mitigating circumstances, which, from accidental causes, had not been brought under the consideration of the Court, afterwards come to light, and create a just claim for a more lenient sentence than that which had been passed at the trial. In either of these cases, application to the Secretary of State is right and proper; indeed, I may say that it behoves every person cognizant of the facts to exert himself to bring the matter under the consideration of this Minister; whose duty it becomes, when statements are laid before him, impugning, on grounds which appear to him reasonable, either the verdict of the jury or the sentence of the Court, to communicate the representations which he has received to the judge before whom the prisoner was tried; and to use all such other means as the powers of his high office enable him to employ, for a searching investigation into the alleged errors. Gentlemen,

I willingly bear my testimony to the readiness with which the Home Office entertains questions of this nature ; and I may also assure you that the Minister is cheerfully assisted by every functionary who has the means of throwing light upon the matter.

But, Gentlemen, there is nothing in this world, however good in itself, which does not become in some degree the source of evil, and this benevolent readiness to entertain objections against verdicts and sentences has, I fear, encouraged the growth of a most scandalous usage, which I will now explain and illustrate.

Artful and unscrupulous persons connected with the prisoner concoct a memorial, containing as many plausible falsehoods as the exigencies of his case require ; but being generally very deficient in character, they find it necessary to support their allegations by signatures which are likely to have more weight than their own. And, Gentlemen, if your avocations had cast upon you as many inquiries into statements on behalf of prisoners as the duties of my office have forced upon me, you would be astonished to find how frequently persons, themselves enjoying and deserving the character of respectable men, are prevailed upon to lend, by attaching their names to documents of this kind, the appearance of authenticity to supposed facts, of the truth or falsehood of which they are in utter ignorance ; an ignorance which, strange to say, they freely own the moment they are questioned upon it, without taking the least shame to themselves for the part they have acted. Nothing, Gentlemen, is more common, as you well know, than complaints of the increase of crime, of losses of property by theft, of injuries to the person, and of the pecuniary burdens which are cast upon us by the misdeeds of the criminal class. And when by these topics the imagination is excited and the temper warmed, bitter censures follow, directed against the over-lenient administration of the law. And yet, if I may trust my own experience, no task is so easy as to obtain a body of signatures in behalf of any criminal, however worthless, upon any representation of facts, however devoid of truth.

Gentlemen, after the full exposure of this vile practice made so recently, I certainly did not expect again to be called upon to protest against this abuse. But when I have submitted to you the details of a case very lately referred to me by the Secretary of State, I think you will be of opinion that I should have

failed in my duty had I omitted to bring the subject once more under public animadversion.

At the last October Sessions, a female prisoner was convicted of a felony, and sentenced to transportation for ten years.

After a delay of several months, a petition from her husband, praying for a mitigation of her sentence, was presented at the Home Office. The allegations of this petition were, that she was tried for stealing a breast-pin valued at 7*s.* 6*d.*, that the breast-pin had never been found, nor had it been traced into her possession—that she had never before been charged with the slightest offence, and that the petitioner firmly believed the breast-pin in question had been accidentally lost by its owner. The petitioner went on to say that the prosecutor himself had expressed a wish to sign a memorial for a mitigation of the prisoner's sentence—that the master for whom she worked had always found her honest and industrious, and would be willing to employ her again if she were at liberty—that her behaviour while in the borough gaol had given the greatest satisfaction to the officers placed over her, and that the undersigned inhabitants of the town of Birmingham, who had known her for a number of years, had always found her strictly honest and well-conducted [I beg you, Gentlemen, to mark the allegation which I have just read], and joined the petitioner in asking the Home Secretary for a merciful consideration of the case, with a view to a remission of punishment. Now, Gentlemen, the petition bore the genuine signatures of several inhabitants of this borough standing high in character. It was placed in the hands of a gentleman whom I well know and deeply respect—a gentleman eminent among you in rank, of acknowledged sagacity, but whose urbane disposition may have pointed him out as likely to take a favourable view of the application. He transmitted it to the Secretary of State, accompanied by a note, in which he says, 'the parties signing the petition, several of whom I know to be persons of credit, seem to entertain strong doubts of the woman's guilt; doubts in some measure confirmed by the fact, which is also stated, of this being the first offence ever laid to her charge; and on these grounds you may, I hope, deem it desirable to investigate the case, with a view to see how far a favourable interference may be justified.' No blame, Gentlemen, can attach to the writer of this letter.

It asks for investigation, which, however, was the last thing desired by the petitioner ; who must have flattered himself that the Crown would act on the statements of a document bearing such respectable names. The Secretary of State, pursuing the usual course, referred the petition to me.

Gentlemen, I well remembered the trial. The facts stood thus :—

The prisoner was a prostitute, and had been such for years.

She accosted a man in the street, and, on being repulsed by him, snatched a gold pin from his cravat. He immediately laid hold of her, but himself was forthwith seized by two men who came up to her aid.

The prosecutor called out for assistance. Fortunately a policeman was not far off, and, hearing the cry, hastened to the spot. Upon his arrival, the two accomplices of the prisoner made off. She, however, was secured ; but the breast-pin was not found upon her, and no one conversant with robberies of this kind would expect her to have retained it after she was joined by the two men who came to her support. Yet, with that reckless disregard of self-inculpation, of which every Session furnishes many instances, when denying the possession of the pin, she told the policeman that she knew who had it. Upon this evidence, Gentlemen, the jury found her guilty, and I scarcely need remind you that her crime was one of a very grave character ; and one which I grieve to say has prevailed in Birmingham to a very alarming extent. Consider also, Gentlemen, the depravity which is implied in these plots between abandoned women and their male accomplices, and the personal injuries not uncommonly resulting from such attacks as that which I have described to you, and I am sure you will feel that offences like this must be repressed with a strong hand.

Having now put you into possession of the real facts of the case, let me inform you what was the result of the investigation which I made through Mr. Stephens, the Superintendent of Police, as regards the petitioner and the other individuals who figure in his romance. The husband, who had so firm a belief in his wife's innocence, and who assured the Minister that the prisoner had never been charged with the slightest offence, had himself been twice convicted of felony ; while the prisoner had been in the year 1846 convicted of an assault as

a disorderly prostitute, and had suffered imprisonment for a month, during which time she so misconducted herself that the Governor of the Gaol was obliged to place her in solitary confinement. With regard to the statement that her employer spoke well of her and was willing to take her again, I found that her immediate employer was a journeyman, who would not be permitted to receive the prisoner, as the master of this journeyman would not allow the woman to enter his manufactory. It moreover appeared that the journeyman did not enjoy the best of characters himself. The alleged desire of the prosecutor to sign a memorial in the prisoner's behalf was thus explained. He signed, he says, because her mother importuned him with tears almost every day, till at length he yielded in order to get rid of her.

Gentlemen, you will not forget the allegation in the petition, that those who subscribed their names to it had known the prisoner for a number of years, and had always found her strictly honest and well-conducted. I come first to the signature of a clergyman, but whether of the Church of England or of Rome, or of one of the Protestant Dissenting Churches, I do not inform you. This reverend person states that he had visited the prisoner in the new gaol at Birmingham, and recommends her case as deserving of mercy.

Now, Gentlemen, great confidence is placed at the Home Office in representations made by ministers of religion, whether of our Established Church or of other denominations; and I am happy to say that this is the only instance in which I ever knew such confidence to be misplaced. When this clergyman was waited upon, it was found that he actually did not know the convict until he saw her in prison, and that he was induced to sign the petition from the distress exhibited by the mother.

I cannot, Gentlemen, doubt for one moment the regret with which a minister of religion would reflect that, by culpable inadvertence, he had pledged himself, with all the authority pertaining to his sacred profession, to his personal knowledge of the good conduct for a number of years of an individual who had been an utter stranger to him until he found her in gaol!

But let us pass on. Next come the names of two reputable

tradesmen. They say they signed the petition on the solicitation of the convict's mother, whom they had known as a customer for the last two years ; of the convict herself, it appears they had no knowledge whatever.

Then I find the names of a highly respectable mercantile firm, who, when asked why they signed the document, replied, that they had done so in the hurry of business ; but that afterwards, finding they ought not to have signed it, they took some trouble to discover the husband, for the purpose of obtaining the erasure of their names, but that they had not succeeded in their search after him.

I believe I have now given you an account of every name attached to this petition except that of one subscriber, who placed it there because he was acquainted with the minister of religion of whom I have spoken, and with another of the gentlemen whose signatures preceded his. Thus, you see that, with regard to this last unscrupulous person, his written statement that he had known the prisoner for a number of years, when it comes to be sifted, dwindles into the irrelevant fact that he was acquainted with two of his fellow-subscribers.

Gentlemen, I will not dwell on the evil consequences of such petitions as that before us.

Certainly it was not so likely to mislead the authorities as it would have been if the skill and caution of its framer had been more equal to his undertaking ; but we cannot without pain reflect on the facilities which good nature, unregulated by a sense of moral duty, gives to criminals to support a tissue of falsehoods by the names of those who pass in the world for persons of respectability ; and who, it is to be hoped, have just claims to the character, notwithstanding the lamentable disregard of what they owed to themselves and to the Government of the country in the particular transaction on which it has been my duty to animadvert with severity.

On one effect of these frequent attempts to impose on the mercy of the Crown I must remark. They create a tendency in the minds of those who are called upon to consider applications in favour of prisoners, to entertain them all with feelings of suspicion, unfavourable to a candid appreciation of such claims.

It is our duty, no doubt, to guard our minds, so far as we are able, against commencing our inquiries under these impressions; but it is to be feared that none are under such perfect self-discipline as to be proof against the operation of such disturbing influences. And if so, the innocent may suffer from the prejudice created by the fraudulent means resorted to in favour of the guilty.

Nor can I pass over without notice the effect of such proceedings on the minds of convicts and their friends, as well as of the class from which they are mainly drawn. The prisoner, instead of resigning himself to his punishment, as what must be endured, and opening his mind to the reformatory influences provided for him; instead of feeling penitence for his crime, and a desire to earn forgiveness, so that he may leave the prison a better man than he entered it, is led to hope for relief through the instrumentality of shameful frauds, and, so far as he is able, to take part in them. And when he finds how easily, and by what culpable negligence on their parts, even ministers of religion may be brought to render assistance in such attempts, it is obvious that, instead of being reformed, his depravity will become more and more hopeless. Let me, Gentlemen, impress upon those who hear or may read the foregoing observations, the solemn duty incumbent on all who interpose in favour of convicted prisoners, to confine themselves within the strict bounds of truth, and to vouch for no representations which they are not prepared to establish.

SEQUEL.

As I have said, this was not the first time, nor the second, I might have added, that I had called attention to the abuses which prevailed in making unfounded statements to the Home Office on behalf of convicted prisoners.

In June of the previous year I laid before the Grand Jury the following case:—A woman had been convicted of feloniously receiving stolen goods, and had been sentenced to transportation for the term of fourteen years. The evidence

against her was, that she had decoyed a child from its mother, which she harboured for the purpose of inciting it to thefts, she herself receiving the stolen articles, and converting them to her own use.

The crime of the prisoner, which was clearly proved, was so revolting, that I did not suppose it possible any interposition could be made in her behalf. Nevertheless, I received from the Secretary of State a petition which had been presented to him praying for a mitigation of her punishment, which petition was signed by persons filling a reputable social position in Birmingham, and, as I am led to believe, deserving of respect for their general conduct.

I transmitted that petition to a magistrate of the borough for investigation, who associated with himself one of his colleagues, and together they instituted a searching inquiry into the whole affair. They found that no one of the allegations contained in the petition had any foundation in truth; and that many of the reputable persons who had signed the document had done so in the most absolute ignorance of all the circumstances of the case, and without any knowledge even of the parties concerned; giving their signatures, as they admitted, simply because they had been asked for them. The petitioner was a person calling himself a 'merchant' in one place, and an 'esquire' in another. He alleged that the prisoner had been in his service, and had held a position of trust, to which he was ready again to admit her. Now, it was discovered that this esquire-merchant was living in lodgings in an obscure part of the town, which I never heard was inhabited either by merchants or esquires. The petitioner, it appeared, had been in trade in a small way, and the prisoner had been his shopwoman; he had afterwards given up his shop, when she rose or sank to the position of his washerwoman: that being the place of trust to which, as he assured the Crown, he was prepared to restore her. The petitioner then went on to aver that the woman had been convicted on the 'evidence of most abandoned characters, a circumstance which was carefully kept from the learned Recorder.' Now, the prisoner had been defended by counsel, who had cross-examined the witnesses with great care, so that if their character was what the petitioner represented it to be, it is marvellous that

the secret was so well preserved. The trustworthiness, however, of the witnesses was thoroughly investigated by the inquiring magistrates, and there was not the slightest pretence for impugning the reputation of the poor mother who had been so cruelly injured by the seduction of the child, and at whom the slander was chiefly aimed. The petition then alleged that the prisoner had been convicted in the absence of witnesses who could have spoken to her character; the fact being that two witnesses to her character were examined—one the petitioner himself, and the other one of the persons who had signed the petition!

Again, this precious document was actually signed by two of the jurors who had found the prisoner guilty. Now, certainly, it is not only the right, but the bounden duty, of a jurymen who discovers that he has been misled, to do all that in him lies to repair his error. But after a jurymen has had evidence before him subjected to all the sifting incident to open trial, after he has duly considered such evidence, and delivered his solemn verdict, it is no light matter for him to hold out to the world that the verdicts of juries are not to be trusted. Before he resolves on such a step he ought to make the most searching inquiries, and to obtain information on which he can rely with unhesitating confidence. It is difficult to comprehend the levity which could induce these two jurymen to vouch a statement, which, unless their memories were very deceitful, they must, supposing they read the petition before they signed it, have known to be a falsehood—namely, that no witnesses were called to the prisoner's character.

Another subscriber also denominated himself a jurymen, allowing it to be inferred, from his so describing himself, that he was one of the jury who tried the prisoner. But that was not so, and his title to the designation only arose from his having been a juror on some prior occasion.

Notwithstanding these exposures, I grieve to say that scarcely a petition comes before me which does not contain deliberate perversions of the truth, even where the interests of the prisoner would be better served by veracity and candour.

I subjoin the report, from the *Birmingham Journal* of October 13th, 1855, of a case which occurred at the Michaelmas Sessions in that year:—

‘In the case of J. D., tried at the late sessions on a charge of felony, after a former conviction for felony, a witness appeared to give the prisoner a good character, stating that he had never heard anything against him prior to the charge on which he was being tried. On cross-examination it turned out that the witness was the master of the prisoner, and that at the former trial he had attended for the same purpose of giving the prisoner a good character, and that in consequence of that character, and of the witness being the prisoner’s master, he was permitted to take the prisoner home with him. In summing up, the Recorder said he had lately met with a similar instance of unscrupulous conduct—in a much higher walk of life—on behalf of a prisoner, who, after a conviction for obtaining goods under false pretences, was convicted on two indictments for the same offence. A memorial was presented to the Home Department, signed by seventeen persons, containing a statement to the effect that the subscribers knew the prisoner, from having had many transactions in business with him, and that up to the time of his trial—meaning his *last* trial, for the memorial was silent as to any former conviction—they had every reason to believe him honest. Two of these subscribers knew of the former conviction, one of them being the master to whom he had been given up, and who described himself as an ex-magistrate of a town of which the Recorder would say nothing more than that it was *not* Birmingham. Of the remaining fifteen no less than eight admitted, on inquiry being made of them as to the grounds on which they had signed the memorial, that they *did not know* the prisoner. Of these eight, two were magistrates, one was a clergyman, and one a dissenting minister. Some said they had never read the memorial, and signed it because they saw the name of the master attached to it, others stated they had signed it out of commiseration for the prisoner’s relatives. The Recorder pointed out the ill-effects of such applications whether successful or not. If successful, they weakened the administration of justice, and might to some extent account for the prevalence of crime. If unsuccessful, their tendency was to disgust official men with such attempts, and might eventually render it very difficult for a just claim to receive due attention.’

Applications in favour of convicted prisoners, even when there is but little ground for impeaching the good faith of those who are parties to them, often betray the grossest ignorance of the true grounds for belief or disbelief, as pervading the minds of persons who have enjoyed the advantages of education and of long intercourse with the world.

I remember a case in which a soldier was tried before me on a charge of forcing a young woman into a barrack, with the aid or connivance of comrades, and then of grossly maltreating her. The chastity of the prosecutrix did not stand quite unblemished, and this fact, together with other circumstances, rendered the trial one of great responsibility on the part of the Court and the jury. No time or labour was spared in the investigation. Two of the officers, having command in the corps to which the soldier belonged at the time of the alleged offence, were present watching the proceedings with the anxiety which, according to my experience, military men, to their honour be it spoken, uniformly evince to secure justice for the inferior members of their profession, and more especially for such as are under their immediate protection. These gentlemen made no attempt to disturb the verdict, nor did they in any way interfere in the prisoner's favour, but, after the lapse of many months, a letter in his behalf was referred to me from the Home Office, written by a member of Parliament not present at the trial, nor in any way connected with Birmingham, but residing in a distant county. In this letter the writer expressed in the strongest language his belief that no ground existed for convicting the prisoner, and, indeed, went on to state that it was impossible he should be guilty. *For these round assertions the applicant's only authority was an oral report of the proceedings at the trial made to him by the prisoner's father !*

INTRODUCTION TO CHARGE OF OCTOBER, 1850.

THE following extracts will form a suitable introduction to the next Charge:—

From the ‘Birmingham Journal’ of October 12, 1850.

‘MURDEROUS OUTRAGE BY BURGLARS IN GREAT HAMPTON-STREET.

‘Frequent and serious as are outrages on persons and property in this town, we do not remember a single instance in which the indignation of the public has been so generally excited and loudly expressed as in regard to an occurrence which has taken place this week—manifested, too, not so much against the perpetrators of the act of violence to which we refer, although a respected inhabitant is the sufferer, as in regard to the conduct of certain officers of the night-duty police. The particulars of the affair to which we advert are known, more or less, to most of our Birmingham readers. About four o’clock on Monday morning last, Mr. Thomas Marston, gold and silver beater, of Great Hampton-street, was roused from sleep by a noise in the house, and on getting out of bed he found that his room-door, which, according to his usual practice, he left ajar on retiring to rest, had been in the mean time closed. This raised a suspicion in his mind that the noise was not made by the servant, as he at first supposed, and he immediately proceeded down-stairs. Glancing into the sitting-room, Mr. Marston saw three men in the act of emptying his side-board of the plate and other valuables which it contained, and a large heap of the spoil was lying on the ground. He instantly attempted to run back to his bedroom, with the intention of getting his fire-arms, but the burglars had become aware of his presence, and attacked him with their bludgeons before he was up many steps of the staircase. Mr. Marston was obliged to turn upon them in self-defence, and being possessed of considerable strength, although somewhat advanced in years, he tore a wooden rail out of the banister, and maintained his vantage position on the stairs for several minutes.

At length, however, one of the villains brought a poker from the sitting-room, and with this he struck Mr. Marston numerous blows across the head and legs. Unable to hold out any longer, he dropped at their feet, but even then they kicked and struck him so as to prevent the possibility of his pursuing them, and as at this juncture a fainting-fit deprived him of his senses, they no doubt thought they had killed him. At last they quitted the house, making their exit from the premises by the same way as they had entered, namely, through the ceiling of Mr. Marston's warehouse, from which a door communicated with the house. But more of the *modus operandi* hereafter. The question must by this time have naturally suggested itself to the reader—the *rencontre* appears to have lasted a considerable time; was no alarm made? where were the police? The affray *did* last a quarter of an hour; cries such as would be uttered by a man engaged in a death-struggle were raised; his daughter and servant were at one of the windows crying out urgently and loudly for assistance; and two or three policemen were actually standing in front of the door, gazing at what was going on—the fact of there being a gas-light on the stairs and a 'fan-light' over the front door enabling them to have an almost distinct view of the whole scene! For ten minutes (according to the statement of one of them, on his afterwards entering the house) had these guardians of the night stood before the house, witnessing what they thought was a simple act of chastisement on the part of a man towards his wife (or son, as another said), at such an hour in the morning, and at one of the most respectable houses in Great Hampton-street. While the conflict was going on, too, Miss Marston implored them for Heaven's sake to come to the assistance of her father, and told them that if they simply broke one of the panes of the front window they would obtain access, as the shutters were not fastened. Although both might be presumed to be experienced officers, from the circumstance of one being a sub-inspector and the other a sergeant, yet they do not appear to have had the least tact or presence of mind, even when a glimmering of the real state of things came across them, and no proper precautions were taken to prevent the escape of the burglars, which they consequently effected at their leisure. Ultimately the door was opened from the inside, and the officers

found Mr. Marston in an insensible state, covered from head to foot with blood, which flowed chiefly from wounds about his head. He was conveyed up to bed, and medical aid being sought, Dr. Bell Fletcher and others were soon in attendance. It was found that the wounds he had received were of a very serious character, and such as might render his recovery a matter of the greatest uncertainty. Inspector Glossop examined the premises in the course of the morning, and found that the burglars had obtained entrance to the back premises by scaling a high wall; they afterwards broke through the ceiling of an outer warehouse, but finding that a thick wall intervened between them and the apartment in which Mr. Marston's valuable stock of gold and silver was kept, another part of the ceiling had to be penetrated, and this they accomplished, making a hole large enough to admit one man at a time. Finding that the stock was deposited in strong iron chests, not easily broken open, they appear to have chosen the alternative of ransacking the house, to which a door opened from the warehouse, as we have already mentioned. No property of any description was missed from the premises. Mr. Glossop took possession of a hat which had been dropped by one of the burglars, as well as the poker, which was covered with blood, and much bent. Having a suspicion of the right parties, he stationed Sub-Inspector Tandy and three or four of the detective force, during the day, in a lodging-house in Carey's Court, Moor-street, and before night they had in custody five young fellows, most of whom belong to a gang of London thieves who have recently taken up their abode in Birmingham. Their names are Christopher Heeley, William Wallace, George Green, Henry Jones, and Henry Thomson, and the hat found by Mr. Glossop will, we believe, be identified by Mr. Glossop as the property of one of them. They were brought before the magistrates on Tuesday, and remanded until to-day, in order that it might be seen whether Mr. Marston could recognise any of them if he was by that time able to attend. Conceiving that the officers mentioned above had been guilty of a gross neglect of duty, Chief-Superintendent Stephens very properly summoned them before the sub-committee of the Watch Committee on Tuesday last, when Miss Marston attended, and stated the facts of the case. A long and somewhat angry dis-

cussion took place, but the result was that the men were simply reprimanded by the Mayor. On inquiring at Mr. Marston's house last night, we found he was somewhat better, although there is no probability of his being able to leave his bed for several days. The suspected parties will, therefore, be simply brought up to-day for remand.'

The only one of the burglars convicted was Christopher Heeley, who turned out to be the nephew of Mr. Marston, the prosecutor. Sentence of death was recorded against him, and he was sent to the hulks at Woolwich. About three years ago he escaped, leaping from the deck of the vessel into the river and swimming away. He was a jeweller by trade, and it was remarked, that although there had been eight robberies of jewellers' shops in Birmingham within a few months preceding his apprehension, there were none for a long time afterwards. He is believed by the police to be now engaged (January, 1857,) in a course of profitable depredation, sometimes at Manchester and sometimes at Liverpool. He is small in stature, but nimble and daring in no ordinary degree. At the date of this murderous attack on his uncle he was but nineteen years of age.

From the 'Annual Register for 1850'.—Chronicle, pp. 126-7.

BURGLARIES.

'It is remarkable that crimes seem to follow some serial law, and to prevail, epidemically as it were, at certain seasons and places. The excitement occasioned by the Frimley murder was at its height, when the public were terrified by a succession of burglaries, attended with more or less violence to persons, which gave rise to a general panic. The most daring only of them can be recorded in these pages; but the curious inquirer will find in the journals of the day astonishing proofs of the prevalence of this crime in England at this time. That robbery, attended with violence to the person, should be the prevailing crime in a civilized country, with its police, telegraph, and detective machinery, is a singular fact in the philosophy of civilization.

'Three men broke into the house of the Rev. O. E. Vidal, at Arlington, in Sussex, on the night of the 20th of September.

After stealing two watches from the servant's room, two of the robbers, both masked, successively entered Mr. Vidal's room. They compelled the gentleman to rise from his bed, show them where he kept his money, and procure the key for them. Mr. Vidal remonstrated with them, and warned them of the great sin they were committing; upon which one of them placed a sword across Mr. Vidal's throat, and threatened to use it if he made a noise. After taking nearly 40*l.* in money, the robbers locked the gentleman in his bedroom, and made tea for themselves before leaving the premises. These fellows are believed to be the same who committed the burglary and murder at Frimley.

'On the Sunday following the day of the murder at Frimley, a burglary was committed at Wokingham, about midway between Reading and Frimley. The shop of Mr. Porter, a watchmaker in the Market-place, was entered during the evening, and property worth from 200*l.* to 300*l.* carried off.

'At Manningtree, a burglary was attended by an unusual atrocity. Some experienced robbers entered the house of Mr. Vail, a hairdresser, by cutting holes in a back door; they rifled the place of a good deal of property, set fire to the lower rooms, and decamped. The family were awakened by the smoke, and managed to escape from the house. The exertions of the neighbours prevented the place from being entirely destroyed, but little of the building or its contents was saved.

'At Manchester, the house of Miss Codling was broken into and plundered, and that lady treated with brutal violence. A jeweller's house at Manchester was broken into, and the proprietor, who maintained a desperate conflict with the burglars, was very much injured. On the 30th November, a house at Frencham Common was forced; the owner knocked down with a life-preserver, and seriously injured; his sister was thrown on the ground and kept quiet by pistols, while the villains ransacked the house. On the 28th October, the Dublin Castle, Camden Town, was plundered, and the contents of the till, about 25*l.*, carried off. A policeman met the robber and challenged him. The robber suddenly turned on his captor, and stabbed him in the face with a knife. A terrible contest ensued. The robber stabbed and cut the policeman's face in all directions, and also cut him on the ear and hand. The policeman, on his side, did not spare his truncheon, and ultimately captured his assailant.'

CHARGE OF OCTOBER, 1850.

GENTLEMEN OF THE GRAND JURY,

THE steady diminution in the number of offenders apprehended and brought to trial, not only in this town in particular, but throughout the country at large, had led me to hope that I should have had to congratulate you on the diminution of crime—an inference to which this great fact so obviously carries the mind. But I must confess that late events have startled me from such a conclusion ; for, in considering whether crime is, or is not on the wane, we must have regard not merely to the number of offenders, but to the intensity of their guilt. Our pockets may be picked of our handkerchiefs day after day; the reckless tradesman who hangs his goods on the outside of his shop may lose them as frequently as he deserves ; and yet this multitude of offences may give a less amount of criminality than one such outrage as that which took place last week at the house of an inhabitant of this borough.

Connected as I have been all my life with Birmingham, my memory furnishes me with no parallel instance of a crime so audacious, or one which must inevitably have diffused such dismay (not to say terror) throughout your vast population. That one of your townsmen, roused from his sleep by the invasion of his peaceful dwelling in the dead of the night, should, when he meets with the burglars, inspire them with no fear—that he should be the pursued instead of the pursuer, and should have to defend his life against their murderous violence—that all this should have occurred in the neighbourhood, if not in the presence of the police, is a most disastrous and humiliating event—an event which imperatively calls on every man among us, who, by the duties of his office or the influence of his position, can aid in such a consummation, to spare no effort which may tend to restore to the inhabitants that feeling of personal security formerly enjoyed by them in its fullest extent, but now so rudely shaken. I am certain that no effort will be spared. The Corporation, my brother magistrates, and the police, will all, in their different capacities, be deeply sensible that the good

government of the town requires to be vindicated ; and its character placed on a very different footing from that on which it is likely to stand after the lamentable transaction on which I have commented.

We shall be reluctant to excuse ourselves on the plea, unfortunately but too well founded in fact, that at the present moment all England is rife with crimes, evincing a degree of atrocity and a defiance of the law, which we had fondly hoped were not characteristics of our age or country. In Surrey, the home of a clergyman has been violated and himself murdered, and in the adjoining county of Kent, the houses of ten clergymen have been robbed. The importance of these offences will expand to our view, when we reflect that they have been committed upon a class both deserving and enjoying the respect and affection of the community—a class, too, never obnoxious to those prejudices which not infrequently place one order of men in hostility with another. We may therefore be assured, that these offences must be the exponents of a much greater number than have ever been brought under our notice.

What has produced this sudden development of wickedness is not, I believe, understood. It is plain, however, that far more must be done for the repression of crime than we have hitherto accomplished, before we can reflect with any satisfaction on the result of our labours. I have so often insisted on the necessity for improvements in the moral and industrial training of the humbler classes, that I will pass by this topic on the present occasion, and invite you to consider a remedy which, though not going to the root of the disease as a rightly-conducted education might do, may, nevertheless, be more apt and efficient for immediate purposes.

It is notorious to all the world, that a numerous class exists amongst us, known individually to the officers of justice as persons who follow crime as a calling, and who have no other means of subsistence than the remuneration which belongs to their nefarious course of life. For a time, not seldom extending over several years, they follow this calling in safety, because no opportunity has been found to bring home to them any particular act of crime. That they must commit offences daily, is just as well known to the police as it is known to us that the passengers whom we meet in the streets must daily eat

and drink ; although we do not follow them to their homes, and are not able to aver that they have taken food of any particular kind, or at any particular moment.

The question for consideration is, whether the period has not arrived when the knowledge thus possessed by the officers of justice may be made available to the breaking-up of those gangs which hold us in a state of constant alarm ; and which, by the example of their impunity, obtain recruits, and spread abroad a moral pestilence.

Deeply venerating as I do the principles of English jurisprudence, and imbued with all those feelings of attachment to them which may be expected to spring from the devotion of many years of life to the practice of our law, I contemplate the necessity of every departure from them with regret and anxiety. Now, as a general principle, the law of England will not embarrass a party accused, by calling upon him to answer a charge relating to more than one transaction. If it become necessary to determine the character of that transaction by inquiring into the prisoner's conduct in reference to other similar acts—as, for instance, in trials for embezzlement, or for passing false coin, knowing it to be false, cases where the repetition of the act throws light on the question as to whether it was the offspring of error or design,—even in these cases the range of such inquiry is jealously restrained within the narrowest bounds. In trials for treason, sedition, or conspiracy, the range is of necessity wider ; but this laxity is practically controlled by the indisposition of courts and juries to convict a prisoner who is exposed to the hardship of having to defend himself, on one and the same trial, against a multiplicity of attacks.

To the observance of these principles many an innocent man has probably owed his acquittal, in times when a disposition existed to pervert the powers of the law into the means of oppression ; and until it can be justly assumed that such a disposition exists no longer, or is subject to some new control, it would be better to endure all the evils arising out of the state of things incident to that long impunity of offenders to which I have referred, than to draw from the scabbard a weapon which, under pretence of warring upon the guilty, might be used for the destruction of the innocent.

But I hope I claim for those who are entrusted with the

administration of the law no more than you, in common with all candid and observant men, will readily concede to them, when I state that their intention is to do justice; and that their failures, when failures occur, are the consequence of infirmity and not of design. It will also be admitted, that from the highest amongst them to the lowest, they exercise their functions in the full blaze of publicity—watched by the thousand eyes of a jealous and vigilant press. Probably, therefore, you will be of opinion that no prisoner has much cause to be afraid that he will at this day be exposed to wilful oppression in our courts. If, then, he can be secured from embarrassment in his defence, no ground will remain why we should forbear from calling on a party to defend himself against a charge arising out of a course of conduct, any more than from a charge arising out of a particular act or acts. And this object, I think, may be accomplished, as I will proceed to explain.

But I shall probably make myself better understood, if in the first place I call your attention to an instance in our law in which the principle in view has been acted upon, or, at all events, very closely approached. There is a statute on the books in virtue of which a reputed or suspected thief, by frequenting streets and certain places therein described, supposed to furnish greater opportunities for plunder than others, may, if the magistrates before whom he is brought infer from such frequenting that his intent was to commit a felony, be adjudged a rogue, and may be punished with imprisonment. Here then we see that, by the law of England, a person, under given circumstances, may be treated as a criminal and deprived of his liberty, in the absence of proof that he has committed any act which of itself is of a criminal nature. This provision, which is now nearly a century old, is, no doubt, a wide departure from the general principle of our jurisprudence to which I have adverted. No complaints, however, have arisen out of the exertion of this authority, open to abuse as it certainly would appear to be; although it cannot be denied that the prisoner may, by its exercise, be placed under great difficulties in defending himself against a charge of *frequenting* a particular place,—a charge implying a repetition of visits, and necessarily extending over a larger portion of time than belongs to the transactions which are the usual subjects of inquiry in the criminal courts. Neither will it escape your observation how

difficult it is for a party accused, to defend himself against the charge of evil intentions in any case in which they are not alleged and proved to be accompanied by injurious acts, and essentially connected with them.

These are the defects of this law as regards the protection of the prisoner. On the side of the public, also, it is far from perfect. A justly reputed thief may be seen in a street which he may have entered for the first time in his life, and yet the circumstances of the case may be such as to leave no doubt on the minds of those who are to decide, that he came there for the purpose of theft. Nevertheless, he would be safe from punishment, because there having been no repetition of his visits, he could not be adjudged to have *frequented* the place in question ; and this defect is probably the cause why a provision, apparently so potent for the repression of crime, is less resorted to than at first sight might be expected.

But imperfect as the provision is in its present state, it may be capable of improvements by which the defects pointed out might be removed. What I would propose is, that when, by the evidence of two or more credible witnesses, a Jury has been satisfied that there is good ground for believing, and that the witnesses do actually believe, that the accused party is addicted to robbery or theft, so as to deserve the appellation of robber or thief, he shall be called upon in defence to prove himself in possession of means of subsistence, lawfully obtained, either from his property, his labour, the assistance of his friends, or from some other honest source. On the failure of such proof, let him be adjudged a reputed thief, and put under high recognizances to be of good conduct for some limited period ; or in default of responsible bail, let him suffer imprisonment for the same term. And as in affairs of such moment it is always advisable to proceed with great caution, I would, until the experiment has been tried and found successful, confine the operation of the law to persons who have already been convicted of a felony, or of such a misdemeanour as necessarily implies dishonesty in the guilty party ; as, for instance, obtaining money or goods under false pretences.

As the testimony against the accused would only amount to a presumption of guilt, so it should seem but reasonable that such testimony might be met by a counter presumption, arising out of the fact, that his wants did not place him under any

overwhelming temptation to commit the crimes in which he was supposed to be engaged. By this course of proceeding he would be relieved from the danger of undue embarrassment in his defence. A party in the enjoyment of an honest means of subsistence can have little difficulty in proving the fact. Doubtless a law so framed would leave some thieves still at large, because it would be too much to assume that none are in the habit of stealing who have other sources of maintenance; yet it would argue very little knowledge of the predatory class not to see that such a provision would enable the ministers of justice to withdraw from society nine-tenths of the malefactors who now roam the country unmolested.

If, Gentlemen, these views had opened upon me in the excitement created by the difficulties into which we are so unexpectedly plunged, I should have distrusted them too much to offer them to your notice. I have no confidence in the wisdom of laws which are prompted by exigencies. I have ever found that the eyes of the legislator, and of those who call upon him to act, are fixed at such junctures exclusively on the particular mischief against which he is urged to provide; and that he and they are prone to neglect the danger of letting in unconsidered evils, in their ardour to keep out the one which, by the force of circumstances, has obtained a great, and perhaps undue, hold over their minds. But the question is one which for years has engaged no small portion of my thoughts. That bands of enemies, to whom even the laws of war are unknown, or by whom they are disregarded, should be permitted to march from village to village, and from town to town, making no secret of their contempt for justice and its guardians, braving the opprobrium of their calling, and only refraining from the most appalling violence when they can secure their plunder without its aid; and that all the while such bands are individually and collectively as well known to the police as to each other, is a state of things which would disgrace an age of barbarism, and which nothing but long familiarity could enable us to contemplate without horror and astonishment. Too frequently has it challenged my attention, in common with that of all others engaged in the administration of criminal justice, to leave the question of a remedy a new subject for consideration; and long before this present season of outrage, I had reduced to writing the conclusions at which my mind had arrived.

If you ask yourselves why it is that I trouble you, the Grand Jury, who have no legislative duties to perform, with the investigation into which I have entered, my answer is, that no important change will ever be made, or, in my opinion, ought ever to be made, in the criminal law, until the people at large are convinced of the propriety of the change proposed. Through you I address no small or unimportant section of the people, and may, perhaps, hope to arrest their attention and excite them to inquire how far the opinions which I have ventured to express are founded in truth.

Whether I am right or wrong, it is satisfactory to reflect that no harm can accrue from what I have done beyond an unprofitable consumption of your time and my own. There are men whose words are deeds, and whose opinions at once fructify into practical consequences, good or evil. Such are bound to a degree of caution not so imperative on humbler individuals. All I wish for is, that as my convictions can obtain no weight from the celebrity of him who promulgates them, so neither may they be prejudiced by his insignificance. On their own merits or demerits let them stand or fall.

The Grand Jury closed their labours on Saturday, and delivered to the Recorder the following address, which was read in Court :—

‘The Grand Jury, before separating, desire to present their cordial thanks to the Recorder for the very able Charge which he delivered to them ; and, if in accordance with his views, would respectfully suggest the importance of publishing the same.’

The Recorder expressed his gratification in finding that his views met with the concurrence of the Grand Jury.

SEQUEL.

Two years after this Charge was delivered, a valuable work on Modern India was published by Mr. George Campbell, the nephew of the Chief Justice of the Court of Queen’s Bench ; from which it appears that a law, very similar to that proposed

by me, is in action in Bengal, but that its operation is impeded by the habits of thinking, brought by the Judges from England.

‘ The last offence which I have entered as against property is that of a notorious bad character, and the presumed living by evil practices, in the absence of ostensible means of honest livelihood. From such persons the magistrate is authorized to demand security for good behaviour, in default of which he may detain them in prison for a limited period—viz., one year; but if it be necessary to keep them beyond that time, he must report the case for sanction of superior judicial authority, and in every instance a fresh order must be passed by the sessions judge every three years. In all such cases the accused party is regularly tried; proof is led that he has a notoriously bad reputation, or has been violently suspected of particular crimes, and he is called on to rebut this evidence, and to show, if he can, that he has honest means of livelihood. He has every facility of appeal against the magistrate’s order.

‘ It may seem that this power is liable to abuse; but is very necessary, and, in fact, the magistrates cannot sufficiently exercise it. There is no general law against vagrancy, of all things the most fruitful source of crime. I believe that two-thirds of the whole serious crime is committed by wandering tribes, who have little honest livelihood. Yet, in practice, no magistrate has any power of dealing with these people. He may apprehend them, but they never can furnish security of any kind, and no one knows anything of them. It is no use keeping them a year and then letting them go again; if they were kept longer, the gaols would not contain them, and the judges would not sanction their detention without specific proof of crime. I have apprehended a gipsy gang (a part of which had already been convicted of theft), wandering about in the disguise of religious devotees, who admitted that they belonged to one of the thieving castes, whose account of their residence turned out to be altogether false, who had no ostensible means of subsistence whatever; yet, in the absence of a specific charge, have been unable to obtain sanction to their prolonged detention, and obliged to release them, to disappear into other districts, and there, of necessity, live upon the community. There is no dealing with these people unless (what I think

would be the best plan) they were deported to some under-populated part of the world, where they would have more to gain by honest labour, and less opportunity of living on the plunder of a fully-peopled country. At present each magistrate merely tries to send them out of his own district into the next.'—*Modern India.* By George Campbell. 1852. p. 470.

From the 'Times,' October 22nd, 1850.

'At the opening of the Birmingham Sessions on Friday last, Mr. M. D. Hill, the Recorder of the Borough, addressed the Grand Jury in a manner which would seem entitled to especial notice. If, as will presently appear, we are unfortunately compelled to dissent in great measure from the conclusions of the learned gentleman, at least we must grant that recent events have given force to his case. Birmingham has lately received an unhappy notoriety, as the scene of a sanguinary outrage, which, if not unprecedented in the horror of its results, can scarcely find its parallel for audacity in the annals of crime. For the moment we will borrow Mr. Hill's own words, in describing to the Grand Jury the nature of the offence which drew forth his words of warning and animadversion:—'It is most disastrous,' said the learned Recorder, 'that one of your townsmen, roused from his sleep by the invasion of his peaceful dwelling in the dead of night, should, when he meets with the burglars, inspire them with no alarm—that he should be the pursued instead of the pursuer, and should have to defend his life against their murderous violence, and that all this should have occurred in the neighbourhood, if not in the presence of the police.' Who is in security if such offences can be perpetrated without impediment? It may well be that the machinery of the police force, the criminal court, and the scaffold can be brought to bear with tolerable certainty on the blood-stained culprit; but of what avail are such precautions when the temple of life has been once violated? Nice distinctions are made between the respective merits of a 'preventive' and of a 'detective' police force; but where human life is concerned, the machinery of a police must of necessity be 'preventive,' or it well nigh ceases to be a protection to the community at all. But the outrage recently perpetrated in the borough of Bir-

mingham is not the only incentive to a more diligent study of the habits of our criminal population, and of the stern necessities of our own position. At no great distance from the metropolis, a quiet country parsonage has been recently invaded, and a clergyman (Mr. Hollest) murdered, almost in his sleep, by a gang of ruffians, each of whom actually received just seven and sixpence as his share, on the division of the paltry spoil. Mr. Hill, moreover, recalled to the recollection of the Grand Jury the fact, that in the county of Kent the dwellings of ten clergymen have just been attacked, with more or less of violence, and property in every instance carried off. It would appear as though crime were assuming a fresh appearance,—as if the ruffian who forces his way into a dwelling-house in the dead hour of night, is ready to aggravate his crime by the assassination of its peaceful owner, if by so doing he can hope to augment his booty never so little, or to add another chance to the probabilities of impunity. It is under these circumstances that Mr. Hill delivered his Charge to the Grand Jury at Birmingham the other day, and certainly the importance of the subject, the gravity and experience of the speaker, and the practical nature of the remedies he suggests, combine to call attention to his address.

‘Three systems are at work in this country for insuring the security of the community against the attacks of that *imperium in imperio*, the criminal population. It is of little avail to blind our eyes to the real facts of the case ; there is a criminal population dispersed throughout the length and breadth of the land—a caste apart which daily and hourly recruits its ranks from all that is most idle, dissolute, and unprincipled among us. The hands of this Bedouin horde are against every man, though the hands of every man are *not* against them. Whether it be negligence, whether that spurious and maudlin philanthropy which is equally ready to breathe a gentle sigh of compassion over the untimely fate of poor Mr. Hollest, or the punishment of his murderers, society in this country carries on a feeble war against the activity and determination of its assailants. The same imbecility of purpose infects us all. We are all alike guilty of treason to the best interests of humanity. The Judge upon the bench, who hitches together an inconclusive charge to a jury, when the guilt of the prisoner has been clearly proved

upon a trial; the twelve jurymen who juggle with their own consciences and with the immutable distinctions between guilt and innocence; the perorating philanthropist who at public meetings indulges in the luxury of tender periods at the expense of the lives of his fellow-subjects; and above all, we, the great mass of the community, who are neither judges, jurymen, nor professional philanthropists, and who yet stand by quietly while all this goes on, are all deserving of the severest reprehension. We have, as yet, discovered but three methods of warding off the danger. One is vindictive, and the remaining two have in a degree the character of anticipation and prevention. The first consists in our system of criminal punishments, and this can only be effective in proportion to the certainty of the arrest of the offender, and the application of the penalty assigned to his offence by the law. The second is to be found, indirectly, in the spread of education, of religious culture—in the repeal of all restrictions upon industry; and, directly, in the aggregate of those measures of reformatory discipline which have within the last few years been devised for the moral reclamation of the criminal, whether in or out of the prison cell. According to the mildness or severity of his temperament, according to his more or less limited range of observation, a man will become a partisan of either one or other of these systems. The third remains; it is purely precautionary, and recent circumstances have combined to show its insufficiency for the prevention of violent outrage on the sanctuary of life. It consists in the whole machinery of our police force—a force, as at present constituted and directed, well enough adapted for the detection of crime and for bringing offenders to justice, but otherwise incomplete. Let us, however, be just. It is a mere absurdity to suppose that the police system can ever receive such an extension as to be directly available for the absolute protection of every parsonage, and homestead, and farmhouse scattered throughout the country. There is no doubt, as we observed on a recent occasion, that much yet remains to be done for the rural police in the way of improvement, but, when all is done, the protection to the public must be very incomplete, if the force is called upon to act against a criminal population, increasing in numbers and audacity. We know of no precautions against crime which have been practically adopted to any extent in this

country, and which are not fairly referrible to one or other of these systems. Mr. Hill attempted on Friday last to recommend the adoption of a fourth method, which, although it may appear at first sight excellently adapted for the prevention of crime, would yet seem to involve considerable danger. Our limits to-day preclude us from so ample a discussion of the subject as its importance deserves; we will, therefore, postpone all comment upon it, and content ourselves with merely indicating the general nature of the scheme propounded by the Recorder of Birmingham.

‘ Mr. Hill starts with the position that the directors of the police force are, through the information they receive from their subordinates, perfectly well acquainted with the persons, and, generally speaking, with the whereabouts of the criminal population. If an order were sent down from the Home Office to Mr. Mayne to-morrow to collect on Hounslow Heath on a day named all the thieves, pickpockets, sheep-stealers, cattle-lifters, and burglars in the fifty-two counties of England and Wales, that able and zealous officer could easily accomplish the task. The members of the police force under his orders are perfectly well acquainted with the persons of the offenders, as they see them slink about the streets; they know the public-houses where they meet and divide their ill-gotten spoil; they could at a moment’s notice open up the stores of the receivers of the stolen goods; they not only know the thief, but his associates, and probably the wretched prostitute who is the companion of his orgies, and the sharer of his gains. The pages of Fielding and the memoirs of Vidocq have been surpassed in our own times by the zeal and diligence of an unassuming and orderly body of men, to whose unceasing labours and watchfulness we owe much of the security we enjoy. The proof of the value of their services is to be found in the almost certainty with which offenders are brought to justice when the crime *has* been committed. Until then the action of the police force is paralysed. Even so they may be perfectly well aware that such a man has committed such a theft, but his arrest would be useless—the legal proof against him is incomplete. Now, it is against this Bedouin force of criminals that Mr. Hill would levy open war for the public security’s sake. When once a man is notoriously affiliated—that is to

say, when it can be proved to the satisfaction of a jury that he is affiliated—to this horde of marauders, the Recorder of Birmingham would have him at once disarmed. The pickpocket of to-day is the burglar of to-morrow, and the *possible* murderer of the next day. Mr. Hill would have him arrested midway in his course of crime. Certainly such a system as this would be of little avail against the audacity of a Rush, or the cold atrocity of such a wretch as the murderess Manning; but, at least, had it been in operation, the assassination of the other day would not have occurred at Birmingham, and poor Mr. Hollest might have been still alive. Here we must pause; but the importance of the subject will well justify us for making Mr. Hill's charge the subject of a second notice. We think we have not failed in stating his case with sufficient clearness. Let us next inquire if the remedy be not worse than the disease. Let us ascertain if it be really the fact that murders are ordinarily committed by the 'criminal population.' Surely, in a case of this kind, we must not be over-hasty in sanctioning a change which might readily make the law a terror rather to the innocent than to the guilty.'

From the 'Times,' October 23, 1850.

.' We proceed to-day with the consideration of Mr. Hill's very interesting charge to the Grand Jury at the borough sessions of Birmingham. As we explained yesterday, the novelty of his plan consists in the fact that he would anticipate crime by the incarceration of all persons 'provably addicted to robbery or theft, so as to deserve the appellation of thief.'* It is very far from our wish to take anything like a captious objection to the system proposed by the Recorder of Birmingham, but it is impossible not to be struck with the looseness of the definition on which it all rests. What is the meaning of a man 'probably addicted to robbery or theft?' Is it a man who has been once, twice, thrice convicted of the crime named? If this were so, Mr. Hill would at least give us something intelligible to go upon. It might, indeed, be hard that no *locus pœnitentiæ* should be allowed to the poor wretch who might be struggling

* Here the writer, who manifestly quotes from memory, is inaccurate. My Charge does not contain the phrase 'provably,' or 'probably addicted to theft.'—M. D. H.

to unloose himself from the chains of vice. It seems a very stern policy which should make three convictions the justification of a fourth, even before the commission of any fresh criminal act. Still the definition would be intelligible, and a practical question might in each case be submitted for the decision of the court. We have a very strong opinion that Mr. Hill could not under any circumstances procure the assent of Parliament to such a doctrine; but, if once sanctioned, it might, no doubt, be acted upon with sufficient certainty. As it appears to us, all other presumptions, short of actual conviction, must necessarily break down. If a person has really been guilty of a theft or robbery, the short plan is to put him upon his trial for the offence of theft, not to produce him in a criminal court as 'a justly-reputed thief.' The old law is sufficient, and the old crime too; why import into the statute-book a new law and a new crime? Let us, however, look a little more closely into Mr. Hill's recommendation. What he says is this:—'When by the evidence of two or more credible witnesses a jury has been satisfied that there is good ground for believing, and that the witnesses do actually believe, that the accused party is addicted to robbery or theft, so as to deserve the appellation of 'thief,' he shall be called upon in defence to prove himself in possession of means of subsistence, lawfully obtained, either from his property, or labour, or the assistance of his friends.' The reputation of 'thief' is to be the substantive offence; the line of exculpation open to a prisoner is to prove himself in possession of lawful means of subsistence. What difficulty would any man, really affiliated to the gangs of marauders who infest society, experience in trumping up a story so plausible that a jury or court could not but formally admit its truth? Every man present might in his heart be perfectly aware that the employer or friend produced was but the accomplice of the party accused, still what could be done? There stands a man in the witness-box ready to swear that he gives the prisoner ten shillings or twelve shillings a week; and how is the evidence to be set aside? What difficulty would any member of the swell mob—any professional burglar or thief—find in producing vouchers for his means of lawful subsistence?

'Impracticable as Mr. Hill's plan would appear to be on a

question of definition, of statutory provision, or of administration, it is even yet more intolerable when we give a thought to the machinery by which it must be worked out. Who are to be substantially the judges?—The police. Who the accusers?—The police. Who the witnesses?—The police. No doubt there is the formal intervention of a court and jury, but they are mere puppets, and the strings which regulate their movements would all ultimately terminate in Scotland-yard. Now it requires but a moderate experience indeed of criminal courts to be profoundly convinced of the fearful amount of injustice that would ensue from the loose admission of the statements of the constabulary force. We would be well content to rest the fate of Mr. Hill's system upon the opinion of any gentleman of experience at the Central Criminal Court. Can the statements of policemen, to the prejudice of prisoners, be ever received without the extremest vigilance? Whether it be over-zeal, whether the bias to suspect guilt inseparable from his calling, whether malevolence or stupidity, the police constable is not a man whose word can be taken upon trust. Now, in the case supposed by Mr. Hill, it is almost exclusively upon the evidence of the constabulary force that convictions must depend. Policemen alone are intimately acquainted with the habits of the criminal population. It is only the policeman who tracks the thief to his haunts, who knows his companions, who sees him loitering about the streets. It is the policeman, therefore, in whose mind the suspicion is generated which is to ripen into the conviction of the prisoner. With every respect for the zeal, intelligence, and respectability of the great mass of the metropolitan constabulary force—for with the proceedings of this body we are more intimately acquainted—we should be sorry indeed to see the day when the liberty of the meanest of our fellow-countrymen was made to depend upon such testimony as this.

‘ We think, then, that Mr. Hill's plan can never receive the public assent—first, from the nature of the offence he would create, and, secondly, because of the machinery by which a conviction must be worked out. At the same time, the suggestions of the learned Recorder deserve to be treated with every respect; for it does appear an anomalous thing that we should be perfectly aware—morally speaking—of the existence of a guilty section of the population whose daily bread depends upon the

success of their aggressions upon property, and yet that we cannot stretch out our hands and restrain them from overt acts of crime. 'That they must of necessity commit offences daily is just as well known to the police as it is known to us that the passengers we meet in the streets must daily eat and drink, although we do not follow them to their homes, and are not able to aver that they have taken food of any particular kind or at any particular moment.' A fact so notorious as this is every now and then mentioned as matter for surprise across a dinner-table, but the recollection of it soon disappears from the memory of most of us. With the criminal judge it is otherwise. We are not, therefore, astonished at finding that a man so zealous and conscientious as Mr. Hill, should have reflected long and earnestly upon the subject, nor that at last he should have proposed some practical plan for the abatement of the evil. We are compelled, although with every respect for the Recorder of Birmingham, to reject his proposition, as likely to produce greater evils than those it professes to cure. At the beginning of his Charge, Mr. Hill observed that at the sessions over which he was then about to preside, there was actually a diminution in the number of prisoners for trial. Is it not, then, the case, that the ordinary means of repression, if they be firmly used, will be found sufficient, without resorting to any extraordinary and perilous novelty? Judges and juries require to be reminded of their duty. We have lately seen far too much maudlin sympathy with the guilty, and indifference to the fate of the unoffending and respectable members of society. When the law, such as it is, is fairly administered, and is found to be insufficient for the repression of crime, it will be time enough for the creation of fresh offences, as yet happily unknown to the statute-book. Finally, we would remark that we must not generalize too hastily because of the two crimes which have been recently committed in Surrey and at Birmingham. It is not true, in ninety-nine cases out of a hundred, that murders are committed by the criminal population, properly so called. The attack of the criminal population is directed against property, not life. We doubt if the criminal calendar of the last twenty years would furnish half a dozen cases analogous to the unhappy outrages that occurred the other day at Frimley or at Birmingham.'

To the Editor of the 'Times.'

'SIR,—Nothing but advantage to the public can arise from a discussion of the points at issue between the *Times* and the Recorder of Birmingham, on his suggestions for the restraint of known offenders. Will you permit me to offer a few observations on the subject, avowing, as I am bound to do *in limine*, that even after reading what has fallen from your pen on this topic, my views are in concurrence with those of Mr. Hill?

'Before, however, I touch on points of difference, let me remark that you have brought under the eye of the public, with a force of language and a felicity of illustration with which your readers must have been far more pleased than surprised, the pregnant fact that the malefactors of the country are perfectly well known to the police. 'If,' you say, 'an order were sent down from the Home Office to Mr. Mayne to-morrow to collect on Hounslow Heath on a day named all the thieves, pickpockets, sheepstealers, and cattle-lifters in the fifty-two counties in England and Wales, that able and zealous officer could easily accomplish the task. The members of the police force under his orders are perfectly well acquainted with the persons of the offenders, as they see them slink about the streets. They know the public-houses where they meet and divide their ill-gotten spoil,' &c.

'It is, then, admitted on all hands, that knowledge actually exists which enables the witness to say, 'that man is a thief; that man is a burglar;' and such knowledge being genuine, he must be able to offer reasons, and point to facts in proof of his assertions. But 'knowledge is power,' and the particular knowledge under consideration is, if it can be reduced to use, and restrained from abuse, a power of the highest moment to the public welfare. Shall we make no struggle to render it available, but let it pass by unheeded, as the savage does the streams of water which his civilized successor, by the appliances of mechanics, turns to so many great purposes of life? Your articles will set many a mind to work on this power, and engage them in devising modes of 'maximizing' as Bentham would have said, the advantages, and 'minimizing' the evils of its action. Like fire, it may be a good servant, though a bad master. All depends on the means of control.

‘The Recorder, then, having a legitimate object in view, the controversy will turn on the *modus operandi*. If his plan, or any plan that can be suggested, can be reduced to wholesome practice, all will agree that a real good has been obtained.

‘Mr. Hill suggests as a matter of opinion, that notorious malefactors may be dealt with, in the absence of proof that they have committed specific offences, by a process which he enounces; but his proposal is not to act upon that opinion, but to confine the operation of a law framed on his principle to the class composed of criminals who have been already convicted of a felony, or of a misdemeanour implying dishonesty, in contradistinction to libels, assaults, and so forth.

‘It is true that he contemplates such a restricted application of the law as only temporary, awaiting the success of the experiment; the law to be extended, if successful, to all known offenders, though not previously convicted.

‘Now, whether such extension will ever be made or not is a matter of speculation, the discussion of which may well stand over until it receives support or condemnation from the result of the prior experiment. So long as the law is confined to the class of convicted malefactors, you are of opinion that ‘a practical question might in each case be submitted for the decision of the Court.’

‘From these remarks it will appear that the points of difference between yourself and the Recorder are reduced to a narrow compass. His projected law may be thus briefly indicated:—First, it applies only to those who have been convicted of a specific act of dishonesty. Secondly, it applies to such only of the convicted class as are to the satisfaction of a jury proved to be engaged in a course of depredation—that proof to consist of the belief of two or more credible witnesses, such belief to be sifted by cross-examination as to the grounds upon which it is formed, and the sincerity with which it is professed. I will then suppose the case for the prosecution to be established *prima facie*, and next consider what defences are open to the accused. He may, if he can, displace the grounds on which the evidence of the witnesses against him has proceeded. This, it is admitted, or rather stated by the Recorder, may be a hardship on the prisoner, as calling upon him to prove a negative. The Recorder, therefore, proposes that as the proof against the

accused consists of presumptive evidence, he should be allowed to set up a counter-presumption, and to relieve himself by showing that he is in the enjoyment of the lawful means of supplying his wants.

‘The objection which you make to this head of the proof is, not that there will be any difficulty in its production by the innocent, but that it will be readily fabricated by the guilty. Let me admit, for the sake of argument, that your opinion may be well founded, and if so, it would detract in some degree, more or less, from the efficiency of the law; but it would in nowise assist the main purpose of your article, which is to show that the course of proceeding proposed by the Recorder is inadmissible, from the jeopardy in which it would place the innocent. I will now suppose the proof of the enjoyment of lawful means of subsistence on the part of the prisoner to have failed, and a verdict to pass against him. What is the consequence? Not of necessity imprisonment. In the first instance he is called upon to give bail to be of good conduct for a limited period of time; and it is only in default of such bail that he is liable to incarceration at all. May I not then submit to your candour that safeguards, manifold and sufficient, are interposed between the accused and either mistake or oppression? Suppose the accused should be unjustly driven from post to post until he be reduced to his last defence; yet, if he is known to his neighbours and relatives to be an honest man, what difficulty would they have in becoming responsible for his not being convicted of crime within the period limited by law?

‘That exceptional cases of unjust suffering may occur cannot be denied. Mistakes are made under all systems of jurisprudence, and made more frequently than persons who do not spend their time in criminal courts are probably aware. As Beccaria says, no proof rises higher than to a probability so great as that we venture to act upon it; absolute certainty in matters of jurisprudence is unattainable. Nature leaves us no alternative between submitting now and then to the condemnation of the innocent, or letting the guilty depart with impunity. If none are to be punished, until judges and juries are infallible, the courts may be locked up for a very long time to come.

‘ Mr. Hill’s plan is framed on the admission that the evidence of criminality which is to be adduced is not of the highest class, and hence its appointed checks and safeguards. But its infirmity may be exaggerated. In some respects it is less open to error than our common form of proceeding, which relies on the proof of a particular act. But, with regard to a particular act, the witnesses sometimes fall into mistakes as to the identity of the prisoner with the person really guilty. In cases of circumstantial evidence the facts inculcating the accused are sometimes fraudulently prepared, as where articles, which are supposed to be stolen, are deposited for some sinister purpose in a servant’s box; these and ten thousand sources of error have beset the steps of all who are engaged in the administration of justice in every age and country. The sources, however, to which I have pointed your attention are evidently less to be feared, when witnesses are speaking of a course of life, than when they are confined to a particular transaction; so that, although on the whole, it may be easier to arrive at the truth, in regard to a particular transaction, than with regard to a person’s course of life, yet the superiority may be much less considerable than at first sight would be conjectured.

‘ Probably the Recorder’s plan would have had a better chance of immediate acceptance by the public, if he had expressed no opinions going beyond his projected law, which, as I have before said, is to be confined to convicts. If I had been at his elbow I should have reminded him of the saying of Fontenelle, ‘ That, if he had his hand full of truths, he would only open one finger at a time.’

I am, Sir, &c.,

‘ AMICUS.

‘ Oct. 24, 1850.’

From the ‘ Times,’ October 24, 1850.

‘ In another portion of our columns will be found a letter upon the subject of Mr. M. D. Hill’s recent charge to the Grand Jury at Birmingham. We have so fully discussed the subject, and so amply explained the motives of our opposition to the proposed scheme, that it will not be necessary for us here to re-open the matter at any length. From respect for the character and reputation of the Recorder of Birmingham, we will not, however, pass over without notice the arguments

that may be adduced in favour of his proposition. The letter of 'Amicus' supports the extraordinary scheme of levying open war against all that numerous class of suspicious character who, by the absence of any evident means of subsistence, by the general idleness and supposed criminality of their conduct, may be presumed to be engaged in such courses as will eventually lead them to some flagrant, perhaps to some sanguinary, act of crime.

'Now, we fully grant that the great mass of the criminal population of this country is virtually under the *surveillance* of the police force. It is well nigh impossible that a man should be guilty of successive acts of criminality, or even that he should be the habitual companion of vagabonds and thieves, without coming under the notice of the police force. So far we perfectly concur with Mr. Hill, or with the writer of the letter which appears in our impression of this day. The question is, how to bring the machinery of the criminal tribunals to bear upon this vast floating mass of crime and debauchery in any such manner that the consequent peril to society will not greatly overbalance the correlative advantages. In a word, is it possible to invent some system by which the 'paulo-post future' criminals of this country can be arrested in their career before the actual commission of crime, in any way which will be really efficient against offenders, without at the same time exposing innocent men innumerable to the terrors of an inquiry before a court of justice, and most probably to the positive evils of incarceration? We need not again enter into the details of Mr. Hill's proposition, after the recent discussion upon the subject. It consists, in the rough, of a proposal for the arrest of persons of suspicious character, who are to be brought up before a jury. It is to be proved against them by the evidence of credible witnesses that they are really persons engaged in a career of guilt, although we believe we are stating Mr. Hill's plan fairly when we add that it is quite unnecessary that the witnesses should give evidence of any specific guilty act. On the other hand, the prisoner may set aside the presumption arising from this testimony by the evidence of persons who will prove that he has in effect lawful means of subsistence. Mr. Hill's proposal is a contest of two presumptions, the first of which would be quite insufficient to

establish the guilt of the prisoner, or the second his innocence.

‘Our objection to the proposition is twofold. It appears to us that a more hideous oppression could not be devised, a more terrible power could not be assigned to courts of justice, than that they should be called upon to pronounce the guilt of a prisoner upon a suspicion that, all things considered, he is in a fair way to commit a criminal act. This suspicion is to be sufficient, unless he can succeed in proving a point which, if proved, would not disarm the suspicion of its sting. What, after all, is the presumption of guilt to be made up of? Why, of the testimony of persons who cannot speak to the guilt of the prisoner upon any specific point, but who suspect, and surmise, and opine, and consider. Why, if any one of the witnesses could prove against the prisoner the substantive act of having picked a stray pocket, let the man by all means be sent to the treadmill for that offence. But you cannot educe light out of accumulated haze, let the accumulation be never so great; you cannot, out of any number of unfledged suspicions, arrive at any such conviction as would justify the incarceration of an Englishman.

‘We object, then, to Mr. Hill’s plan, not only because it would, in our opinion, affect the innocent more than the guilty, but because it would be to admit into our system of criminal jurisprudence a theory of guilt, and a manner of proceeding, which could at any time be used against the humbler classes of our countrymen with fearful effect. The writer of the letter which we print to-day appears to be of opinion that Mr. Hill has gone too far, and would confine the operation of the proposed system to persons already convicted at least once of any felony, &c. Alas! is one conviction to justify a second? Is a man to be twice punished, if not actually *for* the same offence, at least *on account* of the same offence? The tyranny of police *surveillance* on the continent of Europe would be nothing to such a scheme as this. We confess, on further consideration of Mr. Hill’s proposition, we wonder rather that he should not have seized a convicted prisoner in the dock, or certainly before his liberation from his term of imprisonment, and compelled him to give an account of his future prospects of subsistence. Should he be unable to make these out to the satisfaction of

the Court, the Recorder of Birmingham might as well come down upon him first as last. We are as far from saying that any such proposal would find favour in our eyes as that the country should directly be charged with the maintenance of the criminal population, for this would be merely to put a premium upon crime; but, at least, this would be a piece of straightforward blundering. In dismissing this subject, we are, however, most anxious to convey our sense of the zeal and intelligence which have prompted Mr. Hill to take up this important subject. It is something to find a man going out of the usual routine of his duties, and sincerely anxious to improve the administration of the law. If we cannot agree with Mr. Hill's present proposition, at least we are convinced that it has been prompted by a very strong sense of public duty.'

From the 'Spectator,' October 26, 1850.

MR. M. D. HILL'S SUGGESTION.

'More burglaries!—even in the very Strand, under the nose of the metropolitan police! The burglarious public seems to be bent upon putting the burglariable public upon its mettle—defying prevention. It is a welcome sound, therefore, when Mr. M. D. Hill announces the existence of a statute whose fundamental enactment suggests the very means which we seem to want, of preventing the crime by arresting the criminal in intention before he becomes the criminal in fact.

“‘There is a statute on the books,’ says Mr. Hill, ‘by which a reputed or suspected thief, by frequenting streets and certain places therein described, which are supposed to furnish greater opportunities for plunder than others, may, if the magistrates before whom he is brought infer, from such frequenting, that his intent was to commit a felony, be adjudged to be a rogue, and may be punished with imprisonment.’

‘But there are defects in this provision, both as regards the prisoner and as regards the public. It cannot be denied that a prisoner might find it difficult to rebut a charge of frequenting a particular place, which implies a repetition of visits that may extend over a long portion of time; and, on the other hand, a justly-reputed thief entering a street for the first time, though so entering it for undoubted purposes of theft, would

escape because it was his first visit ; he had not repeated his visit, and therefore had not frequented the place. Mr. Hill thinks that this imperfect provision is capable of improvement so as to answer our present purposes.

‘ ‘ What I would propose is, that when, by the evidence of two or more credible witnesses, a jury has been satisfied that there is good ground for believing, and that the witnesses do actually believe, that the accused party is addicted to robbery or theft, so as to deserve the appellation of ‘ thief,’ he shall be called upon in defence to prove himself in possession of means of subsistence, lawfully obtained, either from his property, his labour, or from the assistance of his friends. On the failure of such proof, let him be adjudged a reputed thief, and put under high recognizances to be of good conduct for some limited period ; or in default of responsible bail, let him suffer imprisonment for the same term.’

‘ At first, to proceed with caution, Mr. Hill ‘ would confine the operation of the law to persons who have already been convicted of a felony, or of a misdemeanour such as necessarily implies dishonesty in the guilty party—as, for instance, obtaining money or goods under false pretences.’

‘ This would, at least, seize upon the population disposed to burglary, and would conduce to the security of life and property ; for burglary may always result in murder. The suggestion is too valuable to drop out of sight ; and it is desirable, therefore, that the opposing difficulties should be fairly grappled with. It instantly occurs to ask, how you could provide prison room for so considerable an addition to our incarcerated population ? How reconcile the people to augmented taxes for the expenditure ? It will need some painstaking to dispose of these two interrogatory objections ; but surely the object is worth the pains.

‘ In the first place it is necessary to know of what the criminally-disposed population consists,—what proportion of it consists of petty larceners, what of probable burglars ; for until we do have a clear conception of such a classification, we do not really know what we have to deal with. We are inclined to suppose that the criminally-disposed population is in great part identical with the vagrant population ; and, if so, we have an additional reason for such amendment of the Poor Law as

would separate the vagrant class more completely from the class of involuntary paupers.

‘ It has been said that, with present opinions, Mr. Hill would not readily find a jury to convict a man of being a felon or misdemeanant on proof of his being a reputed and probable thief; but a conviction would be greatly facilitated if the case laid before the jury were not a constructive one of felony or misdemeanour, but an actual charge of vagrancy: the definition of vagrancy being the absence of any honest mode of subsistence. To set down the terms for defining such a charge would be the second task for those entrusted with the requisite reform.

‘ Another facility towards a conviction would lie in a definite knowledge on the part of the jury as to the future treatment of the vagrant in custody; and in this respect the past career of the prisoner might legitimately be taken into the account. It might be used to determine the *class* of vagrants to which he should belong; and on determining his class, he should be adjudged liable to an appropriate custody.

‘ The amount of prison accommodation might be the more readily obtained if the public had a clear conception of two facts,—that the inchoate criminal would really be detained so long as he was probably dangerous, and that his custody would repay the State. An effectual detention would in itself repay the body politic; but how define it? The most likely plan would be, to place him under the operation of reformatory labour, such as that suggested by Captain Maconochie, under which the prisoner would have to *earn* his own release. Now, a man who has earned his release is *prima facie* a safer man than one not disposed to labour; and, in point of fact, we believe that the total want of industrial education in our state of society explains the criminality of many. But the labour provided for the moral discipline of the prisoners might well be such as to give some advantage to the State, though it should not interfere with the common labour market. There are many works of the nature of sanitary improvements, reclamation of land, improvement of roads and bye-paths, that would benefit the State, and be really advantageous to the body politic in the long run, although they would not ‘pay’ for the employment of ordinary labour.

‘ Provisions of this kind would need some consideration; but

if they were undertaken with anything like the proper diligence, they need not consume a very great deal of time. Because they stand forward as preliminaries to an effectual improvement of the law, they need not prevent the passing of a bill. The exceedingly defective security of the public ought to act as a stimulant to diligence. So long as laziness or indecision suffers it to continue, our leading legislators will be responsible for the calamities that may happen.

‘ Mr. Hill’s suggestion has attracted very general attention, and has drawn earnest criticisms from the daily press—for the most part in a favourable spirit. The *Times* has characteristically made itself the organ of John Bull’s creditable, but overstrained and justice-clogging dread of oppressing the prisoner while pursuing the criminal; but its ingenious and rhetorical argumentation has gone on a misapprehension and misrepresentation of the exact proposals made, and has to a considerable extent been refuted by one of its own correspondents. The objectors and the defenders between them may assist Mr. Hill to reproduce his scheme with exact explanations and developments qualifying it for practical embodiment in our laws.’

From the ‘Spectator,’ November 2, 1850.

PREVENTIVE JUSTICE.

‘ ‘The question for consideration is, whether the period has not arrived when the knowledge possessed by the officers of justice may be made available to *the breaking up of those gangs* which hold us in a state of miserable fear, and which, by the example of their impunity, obtain recruits, and spread abroad a moral pestilence.’ ’—*The Recorder of Birmingham’s Charge to the Grand Jury, 18th October, 1850.*

‘ As might have been expected, the principle involved in Mr. Hill’s proposal has received much less attention than the plan on which he suggests it should be carried into effect. The objectors, indeed, almost entirely confine themselves to criticisms on the machinery, forgetting that even if the particular form of proceeding pointed out were open to objection, the question would remain, whether some other process, more happily embodying the principle itself, might not be devised? On the other hand,

if the principle afforded no sound basis for legislation in any form, it were a waste of time to examine particular plans.

‘Two cardinal facts are admitted by all who have entered into the controversy. First, that there is *a criminal population* in existence among us—by which we mean a class drawing its livelihood from the produce of crime. That such a class does not include all offenders is obvious. The Rushes and the Dr. Websters did not belong to this class; and they can perhaps only be dealt with by the law as it now stands. The second cardinal fact is, that the members of this class are individually known to the police, and probably to many others. These facts being established by universal consent, the inquiry forces itself upon every reflective mind, Cannot the facts be turned to account? is the science and practice of jurisprudence in such a state of barbarism as not to be able to touch them with safety to the community? The answer may be ay or no, according to the present state of our legal institutions, and of the honesty and intelligence of those who work them. Little more than a century ago the power of steam was only known as an enemy. Explosions occurred now and then, and mischief was done; but no service was rendered, because appliances had not been discovered for controlling and directing its operation. Now it would take a volume to describe all the uses to which steam is applied, and another to indicate the further tasks that are in store for it.

‘The policeman knows that A. B. is a thief. That is admitted. He knows it by a number of observations, each in itself trifling, but altogether producing, and justly producing, clear conviction upon his mind. Thus we have witnesses; cannot we have a trustworthy judge and jury? The case would present no particular difficulty to an honest judge; and nobody pretends that dishonesty—that is, the desire and intention to commit injustice—is to be feared. Then with regard to the jury: it must be recollected that the topics which have been urged as to the danger of mistake will be open to be urged to each jury in each case. The testimony of policemen, no doubt, ought to be acted upon with caution. So say, and very justly say, the objectors. But what is to prevent the necessity for that caution being urged by the counsel for the prisoner, and corroborated in his charge by the judge? If experience proved that the

strictures on the evidence of the police were so well founded that it would be dangerous to act on such evidence when standing alone, judges and juries would quickly find out the secret; and no verdict would pass against the prisoner unless the evidence of the police received independent support. Nay, if it were thought wise to prescribe evidence by law, such corroboration might be made imperative by statutory provision; just as in cases of filiation under our present law of bastardy, the testimony of a mother, although full credit may be given to her evidence by the court, is insufficient of itself to justify an order against the putative father—additional proof must be found, or the claim abandoned. Nor would this restriction present any insuperable difficulty to the prosecutor. Parish officers, neighbours, and many persons unconnected with the police, will be able to give evidence on the subject, the necessity for which would operate as a check on that of the police.

‘So, on behalf of the prisoner, it would be as competent to him to produce witnesses to his character as it is at present when on trial for a specified offence. If there were a conflict of evidence, the jury would in that case, as in a thousand other cases, have to decide to which class of witnesses credit should be given; and they would never fail to be reminded, that if they entertained a reasonable doubt, it would be their duty to give their verdict in favour of the accused. We have, then, advanced thus far, that the ascertainment of the grounds on which a particular individual is reputed a thief may reasonably be left to the decision of our tribunals. Everything else resolves itself into a question of what checks against error it would be desirable to introduce into the proceeding. This topic involves details into which we do not feel it necessary to enter. The point to which we have desired to direct the attention of the reader is this—A. B. and C. being known to be ‘reputed thieves,’ can such knowledge be safely acted upon by our courts? and if so, will it not be an advantage to the community that it should be used in putting them under restraint, and thus depriving them of the power of using their freedom, as we know they use it, to the constant and systematic injury of society?

‘But we must caution the readers of Mr. Hill’s Charge against a misconception which has been the cause of much eloquence run to waste. It has been supposed that when a convicted

offender is charged with being a reputed thief, his career before his conviction is to be put in evidence. This is not so. The question is not what *he has been* at a former period, but what he *is* at the time of his apprehension. Is or is not his *present* life a course of theft? If, by turning him out of prison without means and without character, the law forces him to recur to his former calling, the blot lies there. Let every prisoner be *permitted* to remain in confinement for the purpose of earning a small sum sufficient to live upon with frugality, until he has had time to seek employment. This provision would incidentally enable him to establish a character—his greatest want—inasmuch as his patient submission to the privations of a gaol, from which he could emerge at any moment, would evince both a desire to abandon his evil courses, and sufficient power of self-control to act upon his aspirations after better things, in the face of strong temptation. In very bad times, his capital and character united might, in exceptional instances, be found unavailing to secure the means of livelihood by the produce of his labour. If so, his duty and that of society point directly to the poor-house. As every man who continues to live must be a consumer, what *can* be the hardship of calling upon him, when placed in circumstances of just suspicion, to show the sources from which his consumption is drawn.

‘The object to be obtained is too important to justify its being abandoned on light grounds. The criminal population is partly hereditary and partly recruited by immigrants. The vices and sufferings incident to the course of life pursued by thieves have a strong tendency to diminish their number; and if there were no additions from without, the class would dwindle away, and in time perhaps become extinct. But the example of impunity, though but for a few years, puts enormous power of corruption into the hands of the veteran offender, and enables him to replenish his band whenever death or the policeman creates a vacancy. If this band were harassed and broken up from day to day, by the operation of the law directed against reputed thieves, theft must cease to be a calling—all continuity of action would be at an end. The professional life of a thief would be too short to give him the opportunity of becoming an adept in his art, and his visitations of our houses and pockets would be rare.’

CHARGE OF OCTOBER, 1851.

GENTLEMEN OF THE GRAND JURY,

AT the Michaelmas Sessions of last year I addressed your predecessors on the repression of crime; confining, however, my remarks to one branch of that great subject, namely, the propriety of holding in restraint known malefactors, who could be shown on sufficient evidence to pursue crime as a calling; although, by their dexterity and good fortune, they had been able to elude the proof of any specific offence.

This Charge engaged public attention to an extent for which I was not prepared. By those best acquainted with the class to be held in check, and with its manifold inflictions on society, I believe I may venture to state that it met with acceptance; but when it was handled by men of acute minds, unguarded from error by practical experience, I ought not to wonder that a new question, or at all events a question new to these critics, should call forth dissent as well as agreement,—dissent exhibiting itself in a multitude of ingenious objections. If I had foreseen that any observations falling from me could have been deemed worthy of so much notice, I might have thought it prudent to offer my views to the public under circumstances which would have enabled me, by treating the subject in greater fulness than can well be done in a Charge, to answer by anticipation the objections which have been urged against me.

My reply I intend to give on the present occasion, and, as I hope, without drawing too much on your patience. No doubt I might have taken an earlier opportunity of performing this task; but I thought it due to the diversity of opinion to which I have adverted to take ample time for a reconsideration of what I had submitted to your predecessors, in order that, by a careful and (so far as any efforts of mine could assure it) a candid review of all that has been urged on the one side and on the other, I might either maintain my position, or retract my errors, and give at the same time publicity to the reasons which had led to my change of opinion. And, Gentlemen, if I know myself,

I should not have felt humiliated by such a retraction. On the contrary, it would have been satisfactory to me to reflect that the discussion which I had originated had proved the fallacy of a remedy which, having been plausible enough to mislead one searcher after truth, might decoy others of more power and influence, and thus lead to its being carried into action.

This review I have at length made, and have weighed the arguments on both sides. I have also taken into account some general facts, which have either come into existence in the interval, or have been made more prominent than before; and I am bound to avow myself confirmed in my original views.

Gentlemen, I submitted to your predecessors a speculative opinion and a practical proposal. My speculative opinion was, that all persons living without visible means of support, and who in the belief of witnesses acquainted with their way of life, are maintained by crime, ought to be called upon to prove themselves in the enjoyment of some honest means of subsistence; and I further submitted that, in the absence of such proof, they should be bound to give sureties for good conduct; and again, that failing to give satisfactory security, they should be committed to prison for a limited period. This was my theory. And it was founded on the well-known fact (which I pause for a moment to state has never yet been controverted), that each individual of the class of professional marauders is well known, both personally and by character, to the police and to his neighbours, and could be pointed out with perfect ease. From this fact I drew the consequence that society (having such means of knowledge within its reach) was not only justified, but bound to use it for the general protection.

In my practical proposal, however, I stopped short; and limited the application of my theory to the cases of offenders who had already been convicted. I adopted this limitation for several reasons; one, that it is always well to proceed step by step in an untried course, or in a course comparatively untried; another, because convicted criminals form a large and by far the most dangerous portion of the predatory class; and third, because by conviction they have necessarily forfeited the confidence of society. That they have been guilty men is an established fact, while in the majority of instances there is neither evidence nor probability of their having abandoned their evil

courses. Indeed how should there be? The administration of the law proceeds on the principle of retribution. The criminal is convicted of a given offence, and has measured out to him a given length of punishment. It is true that during his term of confinement we take some steps to reform him which are more or less adapted to that end. But his detention is neither in the first instance regulated by an estimate of the time required for that purpose, nor is there any power to continue it until his reformation is effected. The prisoner is afflicted with a moral disease, but the prison cannot be considered in the light of an hospital for its treatment, without exposing the administration of criminal justice to ridicule. For what should we think of an hospital for the cure of a malignant and infectious disease (and surely no disease can be more malignant and infectious than crime), if the rule of its governors were to keep the patient, not until cured, but a week, a month, or a year, according to a principle of regulation quite irrespective of his condition at the time of his dismissal,—making it altogether a matter of accident whether he is relieved of his distemper, or whether he is sent forth to spread infection through the land?

As long, then, as punishment is measured out on the retributive principle, so long an individual once convicted must remain an object of just and unavoidable suspicion; and the class to which he belongs may reasonably be selected for any experiment which the welfare of the community requires to be instituted.

To those who have made it a topic of observation and inquiry, it is well known that criminals not infrequently pursue a system of depredation with impunity for long periods. With regard to one man very lately sentenced to transportation, it has occurred to me to know that his career of crime extended over more than thirty years without a single conviction; and I have strong reasons for believing that his is by no means a solitary case. Almost every newspaper contains some paragraph narrating a criminal exploit in which there is a combination of skill and boldness marking out the perpetrator as experienced in the violation of the law. We often read of attacks in streets and other frequented thoroughfares by ruffians who seem to have taken as their model the Indian Thug; and their feats prove them as dexterous as their master, while in audacity they

leave him far behind. Such outrages as these, Gentlemen, are not the acts of *tyros* in villany. They imply the skill, the contempt of danger, and the indifference to the sufferings of their victims which training, and training alone, can give. And here we cannot shut our eyes to the fact that our present system of punishments offers great facilities, not to say inducements, to a training to crime.

In order to place this unhappy tendency in a clear light, let me suppose for a moment that our object were to defeat the intention of our own laws, and to strengthen the propensity to crime, in every individual in whom such propensity had ever been disclosed, by the commission of an offence. Let us compare our present mode of proceeding as to criminals with that which we pursue when our wish is not to deter but to stimulate and encourage; and I think you will observe a wonderful similarity. What is our treatment of our children in their education? Do we not give them short and easy lessons at first, lest they should be disgusted with learning at the outset, and so close their minds against the lessons of their teachers? And do we not augment their tasks with the growth of their strength, and in proportion as practice adds to their ability for mental application? Do we not, in short, graduate the rate of their progress according to their powers of action and endurance? Well, then, let us now consider our treatment of criminals.

When the juvenile offender first presents himself at the bar we give him a slight imprisonment, just enough to accustom him to short separations from his companions, and to dispel the wholesome illusion which had made the gaol a place of fear, because it was a place of mystery. On the next occasion he remains longer, but he has become practised in prison life, and bears confinement far better than he would have done but for his former lesson. This process is repeated from time to time, while the moral which the wretched creature draws from his alternations of confinement and freedom is not to refrain from offending, but to commit offences in such a manner as shall least expose him to the risk of detection; and moreover he resolves that when at length detected, he will bear his privations with as much contempt and defiance as he can command: consoled by the prospect of restored freedom, and the hope of better fortune in future.

Is not this, Gentlemen, a fair parallel? And does it not shew that our treatment of malefactors is better calculated to confirm them in evil doing, than to withdraw them from crime?

It will be observed that I speak of the general working of our system. That there are many exceptions to the rule I am glad to believe. No man can appreciate more highly than I do the labours of many governors and many chaplains, aided as they often are by volunteers of both sexes, who look on the criminal, not as an outcast, to be flung aside in contempt and hatred, but as an erring brother to be reclaimed from guilt, if by the most strenuous and persevering efforts of well-directed kindness that great end can be reached.

If, then, Gentlemen, the foregoing remarks are well-founded, the number of convicted malefactors roaming at large must excite much less of surprise than alarm; but I greatly fear that we are yet to expect considerable additions to this body. It is well known to you, as to all persons of education, that during the last forty years (dating from the time of that great and good man, Sir Samuel Romilly) there has been a steady progress made by the Legislature in mitigating the severity of our criminal code; which, when he began his labours, was the most sanguinary to be found in the civilized world. Neither can it have escaped your observation, that the sentiment which has actuated the Legislature has also prevailed in the administration of criminal justice. . Indeed, society, through all its gradations, is imbued with a far milder spirit than in bygone times.

The combined operation of these causes has been not only to shorten terms of imprisonment, but to make the severer penalty of transportation of less frequent occurrence in proportion to the number of convicts than heretofore; a circumstance which would have attracted more attention if the difficulty of ascertaining the numbers actually sent out of the country at different periods were less than it is and always has been.

And now an additional obstacle in the way of transportation has arisen, which threatens very seriously to lessen, if not altogether to extinguish this kind of punishment.

Penal colonies planted by the mother country at a vast expense for the disposal of her convict population, and which formerly were the willing recipients of these degraded persons (gladly availing themselves of the ample supply of labour thus

afforded for bringing their tracts of new land into cultivation), have at length discovered that the moral evils incident on the importation of malefactors far outweigh the material benefits to which they (the colonists) had hitherto limited their calculations.

It would be unbecoming in me while sitting here to enter into the controversies and heartburnings which have arisen out of this change in colonial policy. All that I desire at the present moment is to call your attention to the portentous consequence which may, and as I think must result from the impediments thus thrown in the way of transportation, when taken in connexion with the causes to which I have adverted, as lessening the number on whom that punishment would be inflicted, even if the facilities for carrying it into effect were as great as they continued to be up to a recent period.

This consequence is the permanent augmentation around us in the numbers of liberated convicts. What that augmentation will amount to it is of course impossible to predict, but that it must be very large is pretty certain, from the experience of countries having no colonial outlets; and because, although sentences for transportation were at all times more frequently for terms of years than for life, so few returned that the country might almost be said to be freed for ever from the presence of a convict when once he had left our shores.

Do not, Gentlemen, mistake me by imagining that I am pronouncing a eulogy on transportation. Believe me, I bear too clearly in my mind the powerful and conclusive arguments by which it has been assailed. All I desire to impress upon you is, that the stoppage of that great sewer which for so many years carried away the dregs of our population, will produce a most unwholesome effect, other things remaining as they are. And that while the country adheres to the principle of retributive punishment (as it probably will do long after the voice to which you so kindly listen is hushed in the grave), so long that pernicious effect will imperatively call for some special remedy—which remark brings me back to the consideration of the one laid before your predecessors, and of which I have already given you a sketch. This I will now more fully describe.

I propose that every person who has been convicted of a felony or of a misdemeanour implying fraud (as obtaining goods under

false pretences, knowingly passing base coin, and the like), shall be liable to be dealt with as follows:—If after the expiration of his imprisonment under his conviction, he shall be brought before a magistrate charged with still persevering in crime, it shall be the duty of the magistrate, if the witnesses by evidence of general conduct satisfy his mind that the charge is established, to call on the prisoner to show that he enjoys the means of honest subsistence either from his property, his labour, the kindness of his friends, the bounty of the charitable, or from his parish. Should he succeed in adducing this proof, he is to be discharged. Should no such proof be forthcoming, he is next called upon to give bail for his good behaviour. Supposing him to answer this demand, he is to be still entitled to his discharge. But in the event of his failure, he is then to be held to bail on his own recognizances, and his case to be sent to a jury at the Assizes or Sessions, when, if a verdict pass against him, he is to be imprisoned for a term to be fixed by the law, but capable of diminution by the judge before whom he is tried.

This, Gentlemen, is my proposal in detail, and perhaps it will appear to you, as it did to your predecessors (who honoured it with their approval when I submitted it to them in outline), that it sufficiently guards the accused against the danger of being deprived of his liberty on fallacious grounds. In the first place, no proceedings under the proposed law would put the convict into custody even for a day, except by the verdict of a jury, unless, indeed, he should forfeit his recognizances by not appearing to take his trial, when he would subject himself to the well-known consequences of such a contempt.

Suppose him then on his trial, and observe how he is fenced round with protections, ‘covered,’ as Erskine expresses it, ‘from head to foot with the panoply of law.’ In the first place, his accusers must satisfy the jury that he was at the time of his apprehension in the course of life which they charge upon him, not merely that he was so before his conviction. This evidence he will rebut, if he can, either by impeaching the character of the witnesses, showing that their statements are false or inconclusive, or by explaining away the facts established against him. And in this part of his case, as in all other parts, he may adduce witnesses of his own. But suppose him to fail in meeting the charge. He then falls back on his second defence,

and shows the manner in which he subsists. Now, if he have in truth an honest income, it is not very easy even to imagine a set of circumstances which will disable him from proving a fact so emphatically within his own knowledge. But we will go on to suppose him defeated in this second defence. Even then, unless he is altogether bereft of honest friends, having confidence that he will not commit crime, he finds bail and remains at liberty. Now, Gentlemen, the species of objection to which I thought my proposal most obnoxious, is, that it offers too many chances of escape to be practically efficient for the restraint of criminals. On this head, however, none who are conversant with the life and habits of the class in question have the least misgiving, nor has that objection been much pressed in any quarter. On the contrary, the numerous attacks which the plan has undergone have been always directed against the danger of committing injustice towards the convict. That such a miscarriage is within the limits of possibility I must admit, but that such trials as I propose are more open to this reproach than trials of specific offences, or so open, I do take upon myself, speaking from a very long experience in criminal courts, confidently to deny.

No tribunal is infallible. No discovery has yet been made which supplies a sure touchstone to human testimony. And if the lamentable fact that innocent men are sometimes convicted were sufficient for the condemnation of criminal jurisprudence, no mode of trial that the wit of man has ever invented could stand. Yet from the strain in which some writers have indulged it might be supposed, if experience had not recorded a very different result, that trials for specific offences never failed of bringing out the truth; always acquitting the innocent, and ascertaining with exactitude the criminality of the guilty. One short statement will dispose of this fond belief, if any person is so misled as to entertain it. The brother of the Lord Chancellor, Mr. Edward Wilde, was the benevolent instrument, during his year of office as Sheriff of London, of saving six persons from death: showing on one occasion that the prisoner was clearly innocent; on others that conclusions had been hastily drawn from facts which did not justify them, and thus nullifying the proofs of guilt; and with regard to the remainder adducing evidence which went so far to mitigate their conduct as to

prove that to put them to death would be a most unjustifiable measure of severity. Whoever to whom these events are known, as they were to me from time to time as they occurred—whoever reflects that they happened in one court, and in one year (nay, in less than one year, for Mr. Wilde held office only for ten months), must see that confining the charge to one specific transaction by no means ensures success in the attainment of the truth.

An especial source of miscarriage is indeed peculiar to such trials, and that happens to be the most frequent by which the administration of justice is beset. I allude to mistakes as to the identity of the prisoner with the party really guilty. But misconceptions of this kind belong only to moments of time (or, at all events, to very short periods), and cannot occur when the question relates to the general tenor of a man's life. Moreover, when a specific offence is charged, it is no conclusive answer (nor can it be) that the prisoner had means of livelihood, and therefore is not to be supposed guilty; such testimony, amounting only to a bare presumption of innocence, which is of necessity overborne by proof of the facts alleged against him. But this presumption of innocence in the proceedings suggested by me, being only opposed by a presumption of guilt, is always to prevail.

And now let me, Gentlemen, ask a plain question. Is a man who has already been convicted, whose conduct is such that a jury is satisfied that he persists in his evil courses, who being then called on to explain how he obtains his livelihood has no answer to give, who is so distrusted by all the world that he cannot find bail for his good conduct; is that man—that pest of society—to remain at large? Ought we, on the mere surmise that errors may creep into the trial of such persons, in spite of all our care, to hold back from the exercise of a jurisdiction of admitted potency for the attainment of its object, when that object is clearly of such vital importance?

Gentlemen, the crying necessity for this jurisdiction so presses itself on my mind, that I cannot refrain from adverting to it once more. But few days have elapsed since the part of England in which I reside (the county of Somerset) was the scene of an appalling outrage, filling the district with indignation and horror. A girl, fifteen years old, was left by her parents alone

at their dwelling, while they went to the neighbouring market at Frome. On their return home they found her dead body stretched on the floor, and dabbled in blood! In the open day—in a house not distant from others of the hamlet, and near to a main road—had this unhappy girl lost her life in the defence—and, alas! in the unsuccessful defence, of her purity. The pangs of death were sharpened by the cruel ignominy of violation. How much less hideous had been her fate—how much less bitter the grief of her bereaved parents, had she been devoured by a beast of prey. Her image would then have dwelt in their memory unsullied by those revolting associations of pollution with which it will now for ever be mingled.

Is the convict then, I ask, to exhaust all our sympathies? Are we to have no thought for the myriads of honest and faithful subjects exposed to the same frightful perils, deeply feeling the want of protection, the comfort of whose lives is sometimes destroyed by the perpetual fear which harasses their minds? But, Gentlemen, we almost always find that an overwrought strictness in one direction is balanced by some glaring laxity in another. Writers who evince the greatest trepidation at the proposal to which your attention has been drawn, themselves urge the adoption of an alternative infinitely more perilous to innocence than the most distorted imagination can figure to itself out of mine. Deliberate advice has been given that each man should defend his house with fire-arms. Let us pause for a moment to examine what this advice implies. It implies that a person suddenly aroused from sleep, in the dead of night, and in all the disturbance of mind which an impending conflict must produce, is, while pointing his blunderbuss and drawing the trigger, to accuse, try, and condemn a suspected burglar, discerned for an instant in the dark, and to execute upon him the irrevocable doom of capital punishment! Surely, for such very fastidious legislators, this is a recommendation somewhat startling.

But what has resulted from the promulgation of this advice? Gentlemen, within a very short interval of time two innocent persons, one of them an officer of police—a protector instead of an assailant—have met their death—falling, mark you, by the hands of clergymen, who (as we should all agree), if the power could be safely exercised by any class of the community, are best entitled to the trust, by the self-restraint and the merciful

spirit which pertain to their sacred calling, and by the reluctance which, above all others, they must feel at sending a fellow-creature to his account with all his sins upon his head ! Nevertheless, Gentlemen, if the law will permit known ruffians to remain at large, these barbarous remedies perhaps cannot, and most certainly will not, be dispensed with ; yet, who does not see that any method of trial, however rude and defective, even *Lynch Law* itself, is infinitely to be preferred ?

I have now, Gentlemen, I trust, shown that my plan is not open to the objections which have been raised against it ; but I cannot conclude without (paradoxical as it may appear) avowing that I am far more gratified than disconcerted at these objections. They prove how deeply Englishmen are imbued with instinctive reverence for the liberty of the subject. This, like every other sentiment, may be carried to an unwarranted length. On the question before you I think it has been so treated ; but I, for one, will ever bear in mind that personal freedom is the surest foundation of our other liberties, and that hostility to any interference with it challenges my respect even when it exceeds the limits of a reasonable jealousy.

If, then, on calm consideration, my proposal shall be found, by the verdict of reflective men, unwisely to infringe on that noble privilege, none will rejoice more sincerely than myself, that I have not been taken at my word. Grateful shall I be to those who will have saved me from the life-long sorrow of having inflicted injury where I had humbly hoped to suggest an important benefit. Thanks, Gentlemen, for your patience ; your task is finished.

The Grand Jury were dismissed on Saturday afternoon, and on coming into Court with their last bills, presented the following address to the Recorder :—‘ The Grand Jury feel that they cannot retire from their duties without expressing their cordial thanks for the very elaborate and important address with which you honoured them at the opening of these Sessions. The Grand Jury feel it to be their peculiar privilege, on the present occasion, to assure you that they are deeply interested in any judicious system that has for its object the *prevention of*, rather than the punishment for, crime ; and they cannot but view with intense satisfaction the earnest solicitude you have displayed in

your address in promulgating a plan by which crime would appear to be so manifestly repressed. The Grand Jury feel it to be their duty again to thank you for your earnest and able advocacy of a Reformatory System in Prison Discipline, believing that philanthropic measures, rather than corporal and retributive punishments, are far more likely to reclaim from vice, and therefore most beneficial to society at large.'

SEQUEL.

From the 'Examiner,' Oct. 19, 1850.

'ATTEMPTED BURGLARY IN THE REGENT'S PARK—ONE OF THE ROBBERS SHOT.'

'On Monday the Marylebone police-court was crowded to excess, owing to a generally circulated report that a desperate burglar had been shot, and killed, and that one of the party with whom he was connected was to be brought up for examination before Mr. Broughton. At two o'clock the prisoner, who gave his name William Dyson, was placed at the bar; he was pale and very weak, and during the inquiry occasionally sat down, holding one hand to his head.

'The first witness called was James Paul, who said—I am butler to Mr. Holford, who is now in America. Between ten and eleven last night I saw everything safe, and at twenty minutes to two this morning I was awoke from my sleep by a noise proceeding from the banqueting-room. I sprang out of bed and looked out of window, and saw the shadow of a man on the lawn. I saw the shadow move. I felt satisfied that there was something wrong, and I woke two of my fellow-servants, both of whom I armed. I descended to the banqueting-room floor, and saw a glaring light, and I went to the stable and aroused the coachmen, to one of whom I gave a loaded gun, and the other took up a pitchfork. I sent them to the south side of the house, taking with me in another direction a double-barrelled pistol loaded, with a bayonet attached. The groom and footman had also been called out, and one of them was armed with a drawn sword. They and I took up our station at the

north front of the mansion. Presently I heard the report of a gun, and on hastening to the spot I saw a man running from the window of the banqueting-room. I followed him and snapped one of the locks of my pistol, but it missed fire. I directly afterwards fired the second barrel at him, at which period he had hid himself behind a bush, having previously ejaculated 'For God's sake don't shoot me!' I left the spot to assist my fellow-servants, who were crying out lustily, and I heard that other men who had been in the banqueting-room had made their escape, and I found that the prisoner was secured by one of the coachmen, who was holding him securely down. I cried 'Police,' when in addition to the other servants the gardener came, but we could not find either of the other parties by whom the mansion had been entered. In answer to Mr. Broughton as to what had become of the man who was shot at in the bush, witness expressed an opinion that he thought he must be dead from the charge of shot which he had received.*

George Bennet (the head coachman) : On being called up, I armed myself with a pitchfork, and went to the park side of the house with one of my fellow-servants. I saw three men coming out of the banqueting-room facing the park. I heard the firing of a gun, and seeing a man running I followed, and, on overtaking him, I knocked him down with a blow with my pitchfork ; the prisoner is the man. One of my fellow-servants came up when he was lying upon the ground from the effects of the blow which I had given him, and I told him to mind him while I went to look for some others. I heard the report of a pistol again, and there were then loud cries of 'police.'

J. Hall (the under-coachman) : Mr. Paul, the butler, gave me a loaded gun, telling me that there were thieves in the house. I saw three men come out of the dining-room window, and I fired. I heard one cry out 'Oh God !' I saw the coachman knock down the prisoner, who said he was killed, and prayed for mercy. He was bleeding from the head, and for several minutes I held him.

Policeman Collins hearing the report of fire-arms and the

* It afterwards appeared that the two wounded men who escaped were not killed. They were shortly after arrested and committed for trial.—M. D. H.

cry of 'Police,' went to the premises of Mr. Holford, and saw the prisoner lying down, two persons having hold of him; he was bleeding profusely. After examining the premises, but finding no one, he sprang his rattle, and, on other officers coming up, the prisoner was taken to the station-house. He seemed much injured, and was very faint. I asked him where he belonged to, and he said to Paddington. He told me that there were four of them concerned in it, and that they had made an arrangement at a public-house at Battle-bridge to meet at the house of Mr. Holford at a certain time, and that each was to take a separate road. All that was found on the prisoner was three-halfpence and a key. Search was made among the bushes and in the canal for the man shot at by the butler, and blood was traced over some fences, over which he must either have climbed, or been carried by some of his companions. The traces of blood were about 150 yards from the outer gate of the park. Some pieces of candle and a crowbar, which had been picked up close to where the prisoner was found, were produced, as was also part of an ormolu ornament of considerable value; it had been broken off a figure under a plateau in the banqueting apartment. Another policeman produced a hat in which were several holes through which shot had evidently passed; there were not fewer than seven or eight perforations. He found this hat in a ditch in the park, very near to the bush at which the butler fired. There was blood inside the hat.

'Policeman Young said: I saw the prisoner lying down on the ground, and he said, 'It is of no use searching the place any further; there were only four of us—two inside and two out.' Witness produced a sling, which he picked up at a short distance from where the prisoner was taken; it was formed by a large stone being placed at the bottom of a handkerchief, the ends of which being laid hold of by any person would enable them to strike a terrific blow, which, inflicted upon the head, would probably cause injury of a fatal nature.

'Policeman Lockeby, who had examined the mansion, found that one of the windows leading to the banqueting-room had been forced open; on the side of the window he found marks made by a crowbar, such a one as he now brought forward. He observed blood on the window. At the spot where the butler shot at the man he saw marks of blood, and there was

a quantity of blood leading to the railings. Went across the park, and in a shed in the Zoological Gardens found, in the crane paddock, upon some straw, marks of blood, as if a man had lain down.

‘The prisoner, being asked if he had anything to say, replied : ‘No, only this—I made no resistance ; I was knocked down with a pitchfork, and a man who came by with a gun struck me with it more than once. I was almost senseless, and I recollect that a man stood over me with a sword, and swore that he would run it through me.’

‘Mr. Broughton, after remarking on the many suburban burglaries recently committed, remanded the prisoner till Monday next.

‘Various rumours have prevailed during the week with regard to the man who was shot, and has escaped. It was supposed he had been traced to St. Thomas’s Hospital, and a man who had recently applied for admission, under circumstances that appeared suspicious, was examined on Thursday ; but the circumstances which he had stated having been proved to be correct, he was discharged, and sent back to the hospital. No clue to the wounded man’s locality has yet been obtained.’

From the ‘Examiner,’ October 26, 1850.

‘THE PREVENTION OF ROBBERY AND MURDER MADE EASY.

‘When we see the infallible safeguards provided against every danger, it seems wonderful that any calamity is ever suffered to happen. ‘Drowning Superseded’ has long been announced to the public in advertising columns ; fire also is ‘annihilated,’ and now burglary and murder are cheaply prevented.

‘Safety from the burglar is to be had by the Electric Indicator, giving instantaneous notice of the first entrance of the thief or the commencement of a fire.

‘Burglary and murder are prevented by Hill’s Bedroom Door-Fasteners, on the easy terms of prices from two to three shillings ; morocco cases, sixpence extra.

‘The next security for life and property is rather more expensive. We copy the advertisement.

‘“Robbery and murder may in many cases be prevented by having a Chinese Gong, a few beats of which would arouse the

country for miles round. Persons living in secluded houses should immediately purchase one. Price of good gongs from 50s. to 5*l.* Very large, powerful-toned ditto from 6*l.* to 8*l.* each. These are the largest and finest-toned gongs ever imported. They are also particularly adapted for dinner-bells.'

'According to the value which a gentleman puts upon his life, will be the price he pays for his gong. For 8*l.* he can arouse the country for miles round, and the gong is as well adapted to announce dinner as murder. But here a question arises. How is the country for miles round to distinguish between the gonging for dinner and murder? The neighbours far and near come rushing in with their succour, and they are told it is nothing but the signal for dressing, or that the squire's table is served. How is a late dinner to be distinguished from an early burglary? When folks hear the gong, they will have to ask themselves the question, Is it killing or eating that is going on, throat-cutting or carving, a cry for help, or joyful summons to the roast beef of Old England?

'A similar objection attaches to the Electric Indicator, giving instantaneous notice of the first entrance of the thief. An ex-director of a railway dines with you, and the moment the guest enters the house, the electric indicator, with its infallible instinct and activity, sounds the alarm! This would be very awkward.

'Hill's Door-Fastener for the prevention of murder and burglary is not to be confounded with the expedient of the Recorder of Birmingham for the same end. The one Hill for safety fastens the bedroom doors of honest folks; the other Mr. Hill would fasten up all the rogues. The worthy Birmingham Recorder would hang every dog with a bad name. His proposal is to incarcerate men for bad characters, provided they have been once convicted of a felony or a dishonest misdemeanour, and are unable to show that they have the means of living without theft. A conviction for a particular offence would thus involve conviction for indefinite offence, and a man once tried and found guilty would in effect be ever afterwards liable to condemnation upon suspicion. Such a law might have its merits if witnesses were always thoroughly trustworthy, and juries invariably wary and intelligent; but with our present machinery of justice, it is better to trust to Hill's Door-Fastener, the Electric Indicator, or the Gong.

‘The most effective protection is had, however, from such an example as that of Mr. Holford’s butler. With the murder of Mr. Hollest doubtless fresh in his mind, that vigilant and courageous servant was not satisfied with mere defensive operations against burglars, but pursued, smote hip and thigh, and unsparingly used his arms against a man crying for quarter. The act (supposed to have been followed by death) was not merciful certainly, but it will serve to strike a terror into robbers, and will show them that such a crime as that committed at Frimley puts honest men upon their defence in a pitiless mood. An execution has not the hundredth part of the warning example of the butler’s summary vengeance on the burglar. We have seen an account, too, of the high courage with which a young gentleman, Mr. Davis of Northampton, resisted and captured a burglar who had roused him from his sleep to threaten his life. Every instance of this kind contributes incalculably to the discouragement of crime and the protection of society. At a meeting of the Peace Association, Mr. Fry saw in the sad fate of Mr. Hollest an example of the folly of resistance; but that brave resistance was not fruitless; and Mr. Hollest’s life was not thrown away, but as much devoted to the public good as that of a soldier killed in defence of his country, for it defeated the main intention of the robbers, and its consequences have brought them into the hands of justice. No burglar, we may be sure, has heard either of the Frimley tragedy, or the defence of Mr. Holford’s house, without a sinking of the heart, and a sickening of his vocation.

‘The rapidity with which one signal atrocity has followed another within a few days, has struck the public with panic; but certain we are that the rapidity and certainty with which justice has tracked the criminals, or summary vengeance has overtaken them, have filled with much more panic the haunts of guilt. The time for alarm has really passed. There had been a period longer than usual without any heinous offence, and in a false security on the one side, and perhaps as false a presumption upon it on the other, several crimes occurred in quick succession; but all accompanied with the lesson conducive to the future security of the public, that there is no impunity, no escape from justice, nor always from the summary vengeance of honesty acting vigorously in self-defence.

‘As we have adverted to various expedients for the protection of the public in its present state of alarm, we cannot conclude without expressing our surprise and disappointment that the Peace Association has not come forward with a plan, or with some counsel for the avoidance of violence. Surely the same principles that are applicable to nations must be available between man and man. How should a person act who finds a robber at his bedside in the middle of the night? Mr. Fry has told us that he should not be so unreasonable as to think of resistance. But what should he do? Should he propose an arbitration? Should he meet the mouth of the pistol with moral expostulation, demonstrate that honesty is the best policy, peace the dearest interest of all mankind, and that he that trusteth to the sword shall perish by the sword? If we could hear of one burglar who *flagrante delicto* engaged in the act had been preached or reasoned out of his felonious designs, we should become converts to the Peace Association; for we shall be content with one swallow in evidence of the summer; and, from the well-authenticated case of a robber stopped and diverted in mid career of rapine by the arms of argument, the belief may be entertained that potentates may not be less amenable.

‘The members of the Peace Association ought to volunteer this trial of the virtue of their principle. It would be beginning at the beginning. Let them commence with the triumph over thieves, and mount up to the aggregates in the shape of autocrats, kings, and republics. Let them put up announcements that they keep no arms in their houses, and use no bolts or bars to their doors. Instead of notice of steel traps and spring guns, let them threaten didactics; instead of ‘Beware of the dog,’ ‘Accept of the arbitrator;’ and let them proclaim the abjuration of all defences but expostulation. Let this system be fairly pitted against the pistol of Mr. Holford’s butler, and we shall see which proceeds on the true view of human nature as human nature is, not as it might, could, or should be.

‘It is remarkable that Swift, who liked best to look at the worst side of human nature—whether because he understood it best or not we will not presume to say—is on the side of the Peace Association, and has indeed anticipated all its arguments in one line, in which he deprecates resistance to one of the worst

crimes that can be attempted; arguing that the guilt comes of the refusal to yield, and sums up:

‘Why are they so wilful to struggle with men?’

which is precisely the question which the Peace Association puts to the whole world in its attitude of defence against aggression.’

The lively scribe who seems to be compelled now and then to furnish his readers with their weekly laugh out of materials not usually contributing to merriment, has praised the conduct of Mr. Holford’s butler in firing upon a man who had submitted, and was imploring mercy. The praise, let us in charity assume, was ironical. The irony, however, is so carefully veiled, that the satire is by no means apparent. Probably the writer would have sought for the facetious elsewhere, had he known enough of law to perceive that his hero had committed a capital offence, and that the eulogist himself might be indicted for inciting her Majesty’s lieges to commit murder; when, unless tried by a jury with keen eyes for detecting jests under very grave disguises, he might shortly find himself in a place by no means favourable to hilarity.

It may therefore be well for the *Examiner*, when sporting with matters of life and death, to make its intent a little more obvious than it has hitherto done. Who can say that such ponderous levities may not have been mistaken for serious advice by the clergymen who shot the two unoffending individuals referred to in my Charge?

The *Examiner*, employing, as he does, his extensive acquaintance with nursery literature, always to the amusement, and not seldom to the instruction of his readers, will forgive me for conveying a suggestion to him, drawn from the hymn-book of Dr. Watts, which he may find useful. The Doctor avers that

‘None but a madman will fling about fire,
And tell you ’tis all but in sport.’

‘Justifiable homicide,’ says Mr. Serjeant Stephen,* ‘may be committed for the advancement of public justice, as in the following instances:—

* * * * *

* *Commentaries on the Law of England*, vol. iv. page 122.

‘ 4. Where an officer or his assistant, in the due execution of his office, arrests or attempts to arrest a party for felony or a dangerous wound given, and the party having notice thereof flies, and is killed by such officer or assistant in the pursuit.

‘ 5. When upon such offence as last described, a private person, in whose sight it has been committed, arrests or endeavours to arrest the offender, and kills him in resistance or flight under the same circumstances as above mentioned with regard to an officer; but in all these cases there must be an apparent necessity, that is, it must be shown that the party could not be otherwise secured.

* * * * *

‘ Otherwise, without such absolute necessity, it is not justifiable.’

It is clear that if death had followed, the killing would not have been justified under the circumstances of the case reported in the *Examiner*. The felon begs for mercy. He ought to have been called upon to surrender, and it was not until he either by words or acts had refused to deliver himself up, that the butler could be justified in shooting him. Neither was this a case of excusable homicide, which is when the killing is by misadventure or in self-defence.* Being, therefore, neither justified nor excused by law, if death had followed the butler must have been held guilty of murder. ‘ For,’ says the learned Serjeant on the authority of Blackstone, ‘ we may take it for a general rule, that all homicide is malicious, and of course amounts to murder, unless where justified by the command or permission of the law, excused on account of accident or self-preservation in sudden quarrel, or alleviated into manslaughter by being either the involuntary consequence of some act not strictly lawful, or, if voluntary, occasioned by some sudden and sufficiently violent provocation: and all these circumstances of justification, excuse, or alleviation, it is incumbent upon the prisoner to make out to the satisfaction of the Court and Jury, the latter of whom are to decide whether the circumstances alleged are proved to have actually existed—the former, how far they extend to mitigate or take away the guilt; for all homicide is supposed to be malicious until the contrary appeareth upon evidence.’ †

And even though death do not follow the wounding, the offence is nevertheless capital by the 1 Vict., c. 85, s. 2.‡

* *Stephen*, vol. iv. page. 125.

† Page 145-6.

‡ Page 149.

From the 'Times,' October 22, 1851.

'The theory of human nature, upon which our penal law seems to be framed, assumes that crime is an occasional and exceptional aberration, rather than the normal and habitual vocation of the culprit. The balance of the faculties is sometimes disturbed. Reason, the queen *de jure*, ceases to be so *de facto*, and desire or anger, obtaining for a while the mastery, would urge us to the commission of theft or murder, did not law step in to the aid of reason, and enforce her mandates by its threats and penalties. This seems to be the legal theory of human nature, and, to meet the state of things whose existence it assumes, it has allotted to every crime its specific degree of punishment, and seems to believe in doing this it is doing all that is possible towards the prevention of guilt. Plausible as this theory is, and little as mankind has felt inclined to dispute its correctness in the abstract, experience has conclusively shown its falsehood. There is now no doubt that crime is, like any other trade, regularly taught and learnt, and systematically practised as a means of livelihood; and that not only does such a profession exist, but that by far the greater number of serious offences are perpetrated by its members as a matter of ordinary business, without excitement, without hesitation, and without remorse. The swindler goes forth to swindle, and the pickpocket to thief, with the same method and regularity with which the carpenter goes to his bench, or the blacksmith to his anvil. It is their trade, and they know and wish for no other. The penalties of the law are regarded as blanks in the professional lottery—things not agreeable, but to be encountered in the way of business, just as sailors brave shipwrecks, or soldiers death and mutilation. There has never been any difficulty in finding soldiers to fight for a paltry pittance in any quarrel, or sailors to venture on any voyage. The risk incident to these occupations has never rendered them unpopular, and has doubtless given them a peculiar charm to many a daring spirit. So also with the professional criminal; the occasional penalties with which the law visits them when detected serve only to give excitement and interest to their business, and to throw a dash of the romantic into the dull details of roguery. Viewed in this light, we cannot see that

punishment is more likely to put down crime than the casualties of war the profession of a soldier. Every occupation must have its drawbacks, and every thief, as well as every recruit, hopes to escape them by his dexterity and good fortune.

‘If we add to these circumstances the fact that the criminal classes are perfectly well known to the police, we have sufficiently stated that anomalous and unsatisfactory state of things which has been of late years periodically brought before the public by the Charges of the philanthropic Recorder of Birmingham, Mr. Matthew Davenport Hill. That we should know perfectly well that there is a class in this country subsisting entirely by the perpetration of crime, that we should have in our service credible and intelligent officers who are able at a moment’s notice to enumerate the persons following this avocation within their particular districts, and yet that we should stand by and allow these offenders to run their course without interruption, and, while we know them to be preying on the vitals of society, should fling around them the mantle of her protection, does, indeed, seem to be a state of things so fraught with contradictions, and so totally unfit for the prevention or cure of crime, that we have reason to be grateful to any one who exposes it, and still more if he seriously turn his mind to the correction of so monstrous an evil. The main difficulty which lies in the way of that correction we believe to be one of evidence. No one can doubt that if a jury be satisfied by fair and legal evidence that a person is ‘persevering in crime,’ it is quite right that he should undergo severe punishment. The only question is how we are to arrive at such a conclusion? This we can imagine to be done in two ways. The first is well known to the law, and consists in giving evidence to particular acts from which the wicked course of conduct may be presumed, just as a common scold or a common barrator is convicted by accumulative testimony of acts of scolding or barratry. Such a method of proceeding would be strictly legal and constitutional, and would justly subject the prisoner to punishment, because the proof of his perseverance in crime would involve the proof of the commission of several separate crimes, for any of which punishment would be justly due. This, however, cannot be Mr. Hill’s meaning. The second way of proving the offence of still persevering in crime would be to

relax the rules of evidence, and to allow a man to be found guilty on mere general surmise, without proving him to have committed any crime at all. This we believe to have been Mr. Hill's meaning; and if so, divested of all disguise, it really amounts to this—that because the law of England requires crime to be proved before a person can be punished for it, criminals repeatedly escape from justice, that rule shall henceforth be altered in case of persons once convicted, and the courts shall be authorised to act without proof of any crime at all. Desirable as it would be to break up the profession of crime, we cannot accept such a result at such a price. Our police are undoubtedly excellent, but they are not fitted for an order of judges. The power of oppression and extortion which such a law would place in their hands would alone be an insuperable objection. To be suspected of being suspected is no crime known to our law; its principle has hitherto been to protect all the innocent rather than to punish all the guilty. Mr. Hill would reverse the principle, and expose innocence to danger, in order the more certainly to strike at guilt. We know not what precise idea to attach to the terms 'evidence of general conduct' or of 'the course of life.' What is a man's general conduct or course of life but the aggregate of his particular actions? If the police know those actions, let them state them, and the jury will infer the course of life. If they do not know them, why should they be permitted to draw inferences whose correctness cannot be ascertained from *data*, whose truth has not been tested? If a jury would not be justified in inferring guilt from hearsay evidence or suspicious conduct, why should a policeman? Such a law would obviously tend to transfer the duties of criminal justice from the juror to the policeman, and to transform that body into odious and extortionate spies instead of efficient and popular protectors.

'We have not spoken of the different chances of escape which Mr. Hill provides for the accused, because, in our view, they are immaterial. If the surmises of the police be fair grounds upon which juries may act, they may as easily justify a conviction at once as the putting the accused on the proof of his innocence. But we cannot help remarking on the impolicy of a law which places every person once convicted in a position different from that of his fellow-subjects. At present, where a

former conviction is given in evidence against a prisoner, the fact is not allowed to transpire until the second offence has been proved; but, according to Mr. Hill's plan, the prisoner will be dragged into court, with a prejudice of a former conviction, to corroborate the vague surmises as to the nature and conduct of his course of life, which are to be sufficient to put him on his defence. How could perjury be assigned on such evidence? Where a witness alleges no facts, how can the falsehood of his statement be proved? and is it not monstrous that any Englishman should be subject to punishment on evidence for which, however unfounded, no one can suffer any penalty? We admit the evil which Mr. Hill points out does exist, and loudly requires a remedy; but we cannot consent to apply that remedy by handing over to the police so terrible and irresponsible a power. Crime is rife both in England and California; but we as little approve of convicting people without evidence in the one as of hanging them without trial in the other. The question yet remains unsolved, and we fear that we must submit to the existence of professional criminals till some mode less objectionable can be devised for their eradication.'

From the 'Manchester Guardian,' October 22, 1851.

‘PREVENTION AND PUNISHMENT OF CRIME.

‘The celebrated dictum, ‘Better for ten guilty men to escape than for one innocent man to be punished,’ has long appeared to us much more sounding than sensible. Why is it better? Punishment is the just award of the guilty by the same law that impunity is the just award of the innocent. It makes no matter whether we refer justice to considerations of abstract right or of expediency,—whether we define it to be the fulfilment of a divine retribution, or adherence to the tacit compact of human society. In any case, the reasons for exacting a penalty from the guilty are precisely the same as those by which the innocent is entitled to his acquittal, and necessarily of equal force. The right which we profess to discern in the matter is violated in every instance where guilt or innocence is divorced from its appropriate consequence; and the injury to society being measured by the degree in which the law misses

its mark, does not vary with the side to which it deviates. It is just as bad for one guilty man to escape as for one innocent man to be punished. The correctness of this opinion seems so clear that we believe it could never have been questioned, had not the severity of our criminal code, up to recent years, inclined men to be merciful even at the expense of being illogical. In those days when hanging filled the place of the treadmill in the penal tariff, judges fell easily into the trap which their hearts set for their judgments, and embraced a smooth fallacy to justify themselves in the neglect of a hideous duty. It was the law that was in fault, not they; and it sought to right itself by the reaction which its sanguinary excess produced. Rudely, perhaps, it succeeded, and a sort of equilibrium 'on the whole' was produced; but now that the law has been humanized and purified, it is high time that it should be relieved from the weights by which its brutal zeal was moderated. Every man who would recoil from prosecuting an innocent fellow-citizen to unjust conviction ought to know that he commits an equal wrong in actively or passively allowing the guilty to escape. His sympathies are at fault in either case; the only difference being that in the first he is the direct, in the second the indirect means of injuring others. It is not asked that he should stifle his emotions of mercy or pity, but that he should direct them towards the victims, instead of to the perpetrators of crime.

'We should be cautious, therefore, how we object to a new proposal in criminal jurisprudence, merely because it offers less advantage to the criminal than is familiar to our past customs, or in harmony with the maxims on which we pride ourselves. At present there is very little danger of our erring in that direction; too much, perhaps, of our erring in the opposite one. It must be acknowledged that we are wonderfully forbearing towards our criminal population. It is a notorious fact that a huge proportion of the crime of the community is committed by professional marauders, whose persons and manner of life are certainly better known and more minutely recorded than those of the followers of any honest trade. They have no possible pretence of living but by preying on the rest of us; yet we forbear to strike them, and even use the knowledge which we possess very inefficiently for our protection. To all intents and purposes,

they are a hostile army within our gates ; but so jealous is our love of liberty, that we never attempt to disarm or restrain them, except when some individual is detected in an overt act of hostility. Separate crimes are punished, but criminality is a tolerated walk of life. It must, at some time or other, have occurred to every thinking man to doubt whether this fastidious reserve is compatible with any right, human or divine. Why should we not lock up, or otherwise get rid of, persons who are doing unmixed harm to themselves and to society? The only objection appears to be grounded on the danger of confounding the innocent with the guilty ; but consideration does not show that the danger need be greater in convictions of this kind than in others with which we are already familiar.

‘ The learned Recorder of Birmingham, Mr. Matthew Davenport Hill, in an interesting Charge to the Grand Jury of the Birmingham Quarter Sessions, has renewed the advocacy of a scheme which he propounded on a similar occasion last year, when it attracted a large share of public attention and criticism. To use his own words, he has ‘ a speculative opinion and a practical proposal.’ His speculative opinion is, that all persons living without visible means of support, and (in the belief of witnesses acquainted with their way of life) maintaining themselves by crime, ought to be called upon to prove themselves in the enjoyment of some honest means of subsistence ; that in the absence of such proof they should be bound to give sureties for good conduct ; and that, failing to give satisfactory security, they should be committed to prison for a limited period. In fact, that, instead of people of this class being entitled to freedom, unless some particular sentence is hanging over them, their normal condition should be held to be restraint, unless they can show some good reason to the contrary. In his practical proposal, however, the learned gentleman stops short, and limits the application of his theory to the cases of offenders who have already been convicted. For this limitation he gives very sound reasons ; for it is obvious that the expedient is strong enough in its limited form. There may be cases, and, as Mr. Hill says so, no doubt there are, of men pursuing a career of crime for thirty years without a single conviction ; but unless we are greatly misled as to the activity and vigilance of

the law, such cases must be very rare. The great bulk of the thieving and murderous classes have been convicted over and over again; they have regularly graduated in crime, step by step; and it is this very circumstance which heightens the audacity and offensiveness of their existence among us with all the immunities of citizenship. We could afford to let them have freedom of action until they got themselves convicted, if we felt sure of a tight grasp upon them after conviction. Mr. Hill's proposal will not be objected to on the score of offering too many chances of escape to professors of the predatory art; on the contrary, the objections to which it will be exposed lie against the danger of confounding the innocent with them in indiscriminate condemnation.

'The validity of such objections can be decided only by practical experience; and the most satisfactory tribunal to which the question can be referred is the judgment of those best acquainted with the habits of the class whom it is desired to keep in check, and the administration of criminal justice. About the principle involved in the matter, we can hardly suppose there is any question that Mr. Hill is right. Society has not only a right, but a duty, to lay a heavy hand upon the persons to whom he calls its attention, and break them by the sternest methods, if not into usefulness, into comparative innocuousness. Every day the necessity of doing this becomes more pressing; for while our population rapidly increases, concurrent events, such as the mitigation of the penal code and the difficulties thrown in the way of transportation, combine with it to increase the number of convicted malefactors roaming at large in our streets and continuing in their evil courses. Against the growth of such a pest we need a new means of protection; and if such a plan as Mr. Hill's approves itself as adequate to minds accustomed to study the conditions of crime, no morbid sympathy or prejudice should prevent its adoption. It is much to be desired that the question should be treated elsewhere, on similar occasions to that on which Mr. Hill has raised it; or if that be an unfit suggestion, that the opinions of learned persons presiding over other courts should be obtained at the direct invitation of the Legislature.'

From the 'Morning Chronicle,' October, 23, 1851.

'It is now rather more than a twelvemonth since the Recorder of Birmingham, Mr. M. D. Hill, Q.C., attracted much public attention and gave rise to an interesting discussion by some novel views which he put forth on the subject of the repression of crime. After the interval of a year, Mr. Hill, in a Charge which will be found in our impression of Monday last, and which, for the clearness and moderation of its language, deserves much praise, declares his adherence to his former opinions, and re-states in detail the propositions which he brought forward last year. With all possible disposition to defer to the judgment and experience of the learned Recorder, we are, however, bound to say that we are far from satisfied with his answer to the objections which we formerly felt ourselves obliged to urge against his original scheme.

'The fundamental fact on which Mr. Hill bases his proposal is the existence of a large class of professional criminals, who are perfectly well known to the police, but of whom the law takes no cognizance, except where overt acts have been committed. These men, who have no source of subsistence but in crime, are allowed to go at large and to choose their opportunities for the perpetration of offences in the manner which may give them the best chance of impunity. Mr. Hill shows that this dangerous class is considerably on the increase, and that it is growing daily more menacing to society—partly from the criminal law being administered in a milder spirit than formerly, which has had the effect of shortening the terms of imprisonment, and partly from the greater infrequency of the penalty of transportation—a cause which the hostility of the colonies to an inundation of our criminal population is likely to increase to an alarming extent. Now, we fully recognise the momentous importance of this great and growing evil, and we are quite ready to acknowledge the service which the Recorder has rendered in impressing its features so vividly upon the public attention. A sense of danger properly regulated is a very wholesome feeling, but we must be cautious lest its very intensity should impel us to adopt remedies which may produce evils of a different, but not less serious character.

‘ Mr. Hill is dissatisfied with our existing penal system, which he asserts to be mainly founded upon the principle of retribution. Now, without pausing to consider whether he be strictly accurate in this view of the matter, we may content ourselves with observing that in a free country the authority of the law can only be maintained by the sympathy of public opinion with its sentences, and that the judgment of the greater part of mankind will approve only of that measure of punishment which they consider proportionate to the offence. Mr. Hill thinks that the present system of awarding a short term of imprisonment for the first crime of a juvenile offender is nothing less than an education in vice. He draws a parallel, which is obviously founded in fallacy, between the method by which we educate a child by progressive lessons—at first short, then gradually increased—and the successive imprisonments, lengthened in duration, awarded to criminals. Now the lesson, it is true, grows easier to the child by this graduated system; but what is it that grows easier to the criminal by progressive punishment? Surely not crime: if anything, it must be imprisonment. ‘ The moral,’ says Mr. Hill, ‘ which the wretched creature draws from his alternations of confinement and liberty is not to refrain from offending, but to commit offences in such a manner as shall least expose him to the risk of detection, and, when at last detected, that he ought to bear his privations with as much of contempt and defiance as he can command—consoled by the prospect of restored freedom and the hope of better fortune in future.’ This *may* be a correct sketch of the ‘ Rake’s Progress;’ but, after all, the evil complained of is at least common to every system of punishment which admits the possibility of a recurrence of temptations and of opportunities for crime. The only mode by which ‘ the alternations of confinement and liberty’ and the consolation of ‘ the prospect of restored freedom’ can be removed, is to sentence every criminal to perpetual imprisonment on conviction for his first offence. Is Mr. Hill prepared to go this length?—and if so, what wise man is prepared to go along with him?

‘ But it is urged that the operation of our prisons ought to be reformatory, not penal. We hope that some progress has been made in combining the reformation of the man with the punishment of the offender, but it is practically impossible that

our prisons should ever be what Mr. Hill would have them—moral hospitals, from which the patients are not to be discharged till they are cured. First, how is the cure to be ascertained? Next, if it were possible to form a judgment on such a subject, it would be impossible—*i.e.*, it would not receive the necessary support of public opinion—to apportion the term of punishment to the character of the individual, and not to the nature of his offence. In point of fact, Mr. Hill has made out no further objections to the existing system of punishment than are inherent in the nature of the subject.

‘We think it, however, only fair to him to state his new scheme in his own words:—

‘‘I propose that every person who has been convicted of a felony or a misdemeanour, implying fraud, shall be liable to be dealt with as follows. If, after the expiration of his imprisonment under his conviction, he shall be brought before a magistrate charged with still persevering in crime, it shall be the duty of the magistrate, if the witnesses to general conduct satisfy his mind that the charge is established, to call on the prisoner to show that he enjoys the means of honest subsistence either from his property, his labour, the kindness of his friends, the bounty of the charitable, or from his parish. Should he succeed in adducing this proof he is to be discharged. Should no such proof be forthcoming, he is next to be called upon to give bail for his good behaviour. Supposing him to answer this demand, he is to be still entitled to his discharge. But, in the event of his failure, he is then to be held to bail on his own recognizances, and his case to be sent to a jury at the assizes or sessions, when, if a verdict pass against him, he is to be imprisoned for a term fixed by law, but capable of diminution by the judge before whom he is tried.’

‘Now to this plan we have to object, first, that it is directly opposed to those fundamental principles of English justice which wisely ordain that a man must be assumed innocent till he is proved guilty, and that his guilt cannot be established by mere hearsay evidence of general reputation, but only by positive proof of specific acts; secondly, the function assigned to the police of accusation on suspicion of criminality would unquestionably soon render that body as extortionate, and corrupt, and odious in England as they now are in many parts of the

continent; thirdly, if a man is to be shut up on the suspicion of his being, or on the probability of his becoming, a criminal, we know not why, consistently with the reasons which led to his incarceration, he should ever be liberated again. We are at a loss to conceive on what ground Mr. Hill proposes that he should be 'imprisoned for a term fixed by law,' for there will be exactly the same reasons for confining him the day after his term has expired that there were on that upon which it commenced—he will certainly not 'enjoy the means of honest subsistence,' nor is it likely that he will be in a position to 'give bail for his good behaviour.' Moreover, we very much doubt whether the proposed plan would really reach the principal offenders, who, from their notorious system of mutual co-operation, would easily defeat its provisions either by tendering the required bail, or, more cheaply, by false testimony.

'We offer these objections to Mr. Hill's views not from any wish to cavil at them, still less from any desire to ignore the greatness of the mischiefs to which he calls attention, but because we are convinced that the remedy which he proposes is alike insufficient, dangerous, and impracticable.'

From the 'Birmingham Mercury,' October 25, 1851.

'THE RECORDER'S RENEWED PROPOSITION.'

'Our philanthropic Recorder has again lifted up his voice on the most effectual means of preventing crime, and seems likely again to have the whole of thinking England for a listener. He has substantially renewed the same proposal which provoked so much discussion, and encountered no little opposition, this very time last year. He has not, however, refused attention to the hostile criticism which his suggestion called forth. He has taken pains to reconcile it, as much as possible, with his own and the national respect for personal freedom. He has endeavoured to throw manifold obstacles in the way of its abuses—he has sought to render its perversion no less difficult than the members of the Constituent Assembly attempted to render the violation of the French Constitution. Mr. Hill proposes that if a person, once convicted of a felony or a misdemeanour implying fraud, is brought before a magistrate on the charge of persevering in crime, and if the magistrate is

satisfied of the truth of the charge, he shall be entitled to call upon the prisoner to show that he possesses the means of subsistence from industry, property, public charity, or individual benevolence. If such proof be forthcoming, the prisoner is to be discharged; if not, he may be called upon to give bail for his good behaviour, and be discharged upon its production; if no one will accommodate him in this matter, he is to be held to bail on his own recognizances, and go before a jury, where, if convicted, he is to be imprisoned for a term fixed by law.

‘Last year, after much pondering, we expressed our dissent from Mr. Hill’s proposal. The renewal of his proposal compels us to a renewed expression of disagreement. Our inability to agree with his plan by no means arises from inability to agree with the feelings and principles of his address. We never partook of that exaggerated and extravagant sympathy with offenders which we hold to be one of the least noble and hope-inspiring characteristics of the present age. We are utterly sick of the miserable sentimentality which infects the moral judgment of society and influences the decisions of juries. We vehemently repudiate that pernicious tenderness towards criminals wherein the leading philanthropists of our day so especially glory. Nothing seems to us so sure of degrading the moral dignity of our times as the prevalence of this mistaken feeling. Intense sympathy with the criminal has impaired our horror of crime. Our tenderness has been unduly engrossed by convicted offenders, to the neglect of painful industry and uncomplaining poverty. For some years our dungeons have been assuming the appearance of palaces, and supplying the comforts of home, while we have only just begun a serious attempt to convert the hideous dens and sties, tenanted by the most indigent members of the community, into abodes not altogether unfit for the habitation of human beings.

‘But this community of feeling with Mr. Hill does not reconcile us to his proposition. The extraordinary power with which he would invest the police is not, after all, so certain of attaining its end. The evil which it would cause strikes us as far more certain than the good that it would bring about. No one can deny its tendency to infringe the sanctity of personal freedom; but we are inclined to question its power of seriously arresting crime. We have ample confidence in the

police as quellers of overt outrage and guardians of the public peace, but we do not repose the same unbounded confidence in them as judges of character and weighers of suspicion. We are not so sure that this arbitrary power, entrusted to them over suspicious characters, must inevitably issue in the diminution of serious crimes. We disclaim all fanaticism in our devotion to the principles of respect for personal freedom. We hold a departure from some valuable principles to be justifiable, if such departure will issue in the removal of some practical and terrible evil. But we must have all possible certainty that the evil will be removed by such a proceeding. We object to Mr. Hill's remedy, both because it is dangerous to the general system and because we can be by no means certain that it will expel the particular disease against which it is directed. We must, indeed, despair of discovering any other remedy ere it can be allowable to arrest upon suspicion and sentence upon surmise. Should formidable crimes go on increasing, should legal ingenuity and philanthropic effort fail in devising any other remedy, then we reserve to ourselves the liberty of reconsidering Mr. Hill's proposal—then, and only then, could we advise the country to listen to the enlightened philanthropist who offers us a remedy, rather than make no effort against the terrible state of things which our supposition implies.'

From the 'Morning Post,' Saturday, October 25, 1851.

'The Recorder of Birmingham still conceives, it appears, that the plan which he propounded last year contains the only true remedy against the spread or continued commission of crime; he still, after pondering over his idea for more than twelve months, is of opinion that all persons who have been once convicted of any offence against the law should be treated precisely as careful Mayors and Town Councils treat anxious-looking and dry-lipped dogs in summer—they should be muzzled or tied up. Mr. Hill, indeed, we believe, suggests only tying up—possibly muzzling did not occur to him. We think we should prefer it. A policeman, for instance, leading in a string a suspected pick-pocket with his nimble fingers muffled securely in thick woollen gloves, without divisions for the fingers, would present to the public a picturesque and instructive spectacle; and he might,

in addition, have an inscription on his chest and back, 'Muffled for want of good security from responsible pocket-wearers.' Foolish, suspected thief! Why did he not subscribe to a guarantee society?

'Let Mr. Hill, however, propound his theory after his own fashion, and in his own words. Mr. Hill's 'speculative opinion is, that all persons living without visible means of support, and who, in the belief of witnesses acquainted with their way of life, are maintaining themselves by crime as their stated calling, ought to be called upon to prove themselves in the enjoyment of some honest means of subsistence;' and he further submits, 'that, in the absence of such proof, they shall be bound to give sureties for good conduct;' and, again, 'that failing to give satisfactory security, they should be committed to prison for a limited period.' That is Mr. Hill's theory.

'Now, to this scheme we see *in limine* objections which appear to us insurmountable. We should protest against even giving it a trial. It is repugnant to the very principles which have hitherto guided both the framing and the administration of English law; it is based upon a misconception, or rather perhaps a defective knowledge of the real character of the predatory class; and last, though not least, we do not believe that it would be possible to work it with any extensive bearing, or to give to it any practical effect.

'Mr. Hill desires that the law should assume that every man who has been once convicted of a felony, or of any misdemeanour implying fraud, should forfeit for ever his rights as a British citizen; and further, that society—that is, his fellow-men—should for ever withdraw their confidence from him. We have no morbid sympathy for criminals, nor do we hold with those mischievous philanthropy-mongers who talk about the influences of an evil hour, as Mr. Hill may satisfy himself if he will refer to the series of articles which we published in the early part of this year on Crime and its Repression; but we are not prepared to go this length. We are not prepared to make a pariah of every man once convicted of infringement of the law, nor to hunt him instantly and remorselessly like a wounded deer, out of the herd of his fellow-men. Mr. Hill is perfectly right thus far; there is a large army, we might almost term it, consisting of various and numerous tribes, with a remarkable

organization, who live—many of them in coarse and riotous luxury—by habitual crime; but there *are* offenders who do not belong to this peculiar population—very many—many of whom may be, and some are, deterred by judicious measures from becoming habitual and professional breakers of the law. Mr. Hill would drive all these men indiscriminately into the ranks of the great predatory army. They would feel that every man's hand was for ever against them. The society of the professional and declared criminal would be all that was left to them, and participation in the organized means of defence against the law possessed by the associated predatory tribes would offer the only refuge to the man who 'by conviction of any offence implying fraud had been deemed to have forfeited the confidence of society.'

'These are some of the objections which considerations of policy merely suggest to Mr. Hill's theory; but there is another of more serious import and of higher character. According to the spirit of the English law, no man can be put even upon his defence without some positive and tangible evidence that he has, in some defined and particular instance, infringed the law. Mr. Hill proposes that common report, or common suspicion, shall be sufficient warranty for requiring from any man tarred with the stick of 'conviction,' either positive proof that he is deriving his living from sources approved by his judge, or to give satisfactory security for his continued observance of the law.

'We have no wish to carp unnecessarily at expressions; but Mr. Hill really seems throughout his development of his idea to be under some little confusion. This new and peculiar legislation is proposed to be applied exclusively to 'persons living without any visible means of support,' and yet, 'who, in the belief of persons acquainted with their way of life, are maintaining themselves by crime as their stated calling.' Now the last part of this sentence practically contradicts the first. If there are persons so well acquainted with the way of life of these pariahs that they can give information sufficient to satisfy the administrators of the law that they ought to be instantly arrested, they must have a remarkably visible means of existence, so visible, at least, that even the most hazy and half-trained rural policeman would have no difficulty in pouncing

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upon them red-hand,' in the very commission of an actual offence, and there would then be no occasion for Mr. Hill's special Inquisition. Mr. Hill, we think, has scarcely clearly represented, even to himself, who will give 'witness of the way of life.' It will not be the neighbours, except where some fellow from a quarrel turns 'nose upon his pal,' because the neighbours of the soldiers of the predatory army are not often honest men, anxious for the purification of society, but just themselves thieves or reputed thieves. The witness must, in fact, always be the policeman, unless, indeed, the gossip of the washerwomen over their tubs be admitted a witness; and if he be such a policeman, and a component part of such a police system as we desire to see established throughout the country, we will answer for it that he will either prevent the man disposed to persevere in crime from committing it, without either being absolutely his bear-leader, or putting the country to the expense of keeping him luxuriously in Reading Gaol, under the gentle tuition of Mr. Field, or he will make the commission of some particular offence so distinctly visible, that his punishment will be secured and justified by the law as it now stands. There are some other important points which suggest themselves in connexion with Mr. Hill's observations, to which we shall take another opportunity of directing attention, and we think we can show Mr. Hill that, even if all the objections to the principle of his proposal could be got over, his scheme would only reach a very small portion, and that not the most dangerous portion, of the predatory classes.'

From the 'Spectator,' October 25, 1851.

'MR. M. D. HILL ON DETENTIVE POLICE.

'The Recorder of Birmingham has just made his annual memorandum on reform of the correctional law; the subject this time being that which he broached last year—the detention of notorious offenders, in order to *prevent* them from adding to their criminal exploits. In the interval the idea has met with much active criticism, and has been tested by many objections,—that it would violate the liberty of the subject; that you could not technically presume criminal intent on the part of a man, however morally certain the fact; that after arresting

him and releasing him you would be bound to re-arrest him on the old grounds, on the next release to re-arrest again, and so on *ad infinitum*. Mr. Hill now replies to several of these objections, showing that, if the criminal has not some honest mode of livelihood, he must have a dishonest mode; that the process of clearing himself would be easy, and that the fastidious punctilios which are perpetually defeating the course of justice really endanger the liberty of the subject, even of the criminal subject, more than the proposed plan could possibly do in practice. For example, the failure of justice to arrest the homicidal burglaries which have been so common during the past year, has suggested the advice that every person should keep fire-arms in his house for self-defence; in other words, as society is not protected by the law, each person is advised to take the law into his own hands; and in the dead of night, in the confusion of abrupt waking, to execute capital punishment on the presumed robber. We saw how that suggestion worked in the case of the Reverend Mr. Smith, who shot Armstrong, of Sorbietrees, in Northumberland. Mr. Hill's memorandum on the subject is useful; it does indeed occasion a flood of 'criticism,' especially at this quiet season of the year; and many of the old objections are repeated just as if he had not answered them; but the effect of the answer is felt, and the public mind is prepared for that practical discussion of the subject which will come at no distant date.

'It is instructive to notice how much reforms of this particular kind are impeded by the prejudices of those who pretend to be above all prejudice, and by the sheerly theoretical presumptions of those who profess to be supremely practical. People lose themselves in speculative questions as to the nature of crime, and while they are disputing whether it is 'sin' or 'moral disease'—sin original or sin the voluntary burden of free will—moral disease to be cured in person through a reformatory process, or by proxy through example—moral disease to be prevented by education, an idea tainted with socialism, or only to be coerced as hopeless of cure,—while we are lost in disputation to which every practical man comes prepared with presumptions cut and dry, and his texts from his Bible, or his political economy, we suffer immense masses of the population to grow up under circumstances, preventible circumstances,

which make criminals out of the innocent. Having made a criminal, we allow him to go at large until we have suffered him to do the very thing which we know he will do, and which it is our object to prevent. Having caught him, we again fall into the speculative disputations,—whether we shall inflict divine retribution for an ineradicable original sin, or whether we shall reform the brute-idiot into a virtuous philosopher; whether we shall give the poor devil a chance of getting on in the world like a man not more dishonest than his fellows, or gratify the vengeance of society.

‘ Surely these speculative questions, since they have not been settled yet, might be left to speculative men, and the practical execution of the ultimate conclusion be left to that future generation which will be living when philosophers shall have attained their goal. Meanwhile, for all practical purposes, the matter may be put in a very simple light. The offender is mischievous, and it is desirable to seize hold of him as soon as possible in order to stop the mischief. Having hold of him, it is desirable to show others who are mischievously inclined that mischief is inevitably stopped, and that he who would be mischievous is deprived of his freedom, in order that he may be made harmless if not useful. It is desirable to effect those objects with no more hurt to the individuals than is necessary for the purpose. It is also desirable, if it be possible, to give him a chance of recovering himself. Few persons will dispute these propositions when they are stated in their simplest form; they point to Mr. Hill’s plan of seizing known offenders whose way of life renders their freedom mischievous to society; also to the same consistent reformer’s plan for giving juvenile offenders a chance of amended conduct; and to Captain Maconochie’s plan of industrial discipline.

‘ Mr. Hill has thrown out a hint that he may put his detentive plan into a more complete and substantive form; and it is to be hoped that he will do so. He will perceive, we should think, the close connexion between the subject of his consideration and the social offence of obstinate vagrancy,—an offence most desirable to be separated from the administration of a law devoted to the *relief* of the poor who are not vagrants. The tangible procedure which he would take against the notorious offender would inevitably shape itself into a charge of vagrancy,

and it would be a great benefit to society if we possessed a work thoroughly revising the whole subject of vagrancy and its treatment.'

From the 'Morning Post,' October 28, 1851.

'Mr. Hill looks upon his scheme as the 'only remedy'* for the diseased condition of parts of the social organization. We say that it would no more be efficient to stay the spread of crime and eradicate the plague-spot of our system than was the enforced residence of Napoleon on the rock of St. Helena to prevent the recurrence of war, rapine, and revolution, or to allay the hatred of races, and turn swords into ploughshares. Ay, even now, when the echoes of Cobden and Burritt's prophecies have scarce died away, the German states are again busied in arming to the teeth. Every one straining his means to the utmost to gather together more of the engines of war than his neighbour. God grant they may not be called into action.

'To return, however, to the repression of individual depredators who prey on their fellow-men. Supposing that all the objections in principle to Mr. Hill's scheme were got over—supposing that legislative assent had been obtained to a law enacting that every man who had been punished for an actual offence proved to have been committed, should be liable at the discretion of local committees of vigilants, to be again punished for offences which the ingenuity of the police or his neighbours might devise that he had in contemplation, even then the machinery of the new law could be brought to bear upon so small a section of the predatory tribes that it would not be operative to any sensible degree.

'And for this reason, a very great proportion of the persons constituting the criminal population of the country *have* an ostensible means of existing without infraction of the law—at least sufficient to enable them to give the slip to Mr. Hill. Tribes of housebreakers, robbers on the highway, cottage and garden plunderers, sheepstealers, pickpockets and swindlers at fairs and races, consist chiefly of men having ostensible lawful occupations. Their ranks are filled with locksmiths, working mechanics, costermongers, hawkers and pedlers, boatmen and

* I never held it out as an 'only remedy.'—*M. D. H.*

canal trackers, porters in the docks, and a host of others. Gentlemen's servants, both in and out of place, form a very dangerous and considerable portion of the predatory population, and a great number of house robberies are committed either by them or with their privity. If our readers are curious on this subject, we recommend them to refer to the Report of the Commission on Constabulary Force of 1839, and the Reports on the Police of the Metropolis and Criminal Commitments. On these constituent portions of the predatory army it appears to us that Mr. Hill's treatment would find it impossible to lay its hand without stretching authority to the verge of despotism.

'There is, however, nodoubt a class of thieves who do not work even occasionally in any other calling, and to these Mr. Hill's machine would probably direct its efforts. But even with regard to these, Mr. Hill's plan would have no real efficiency, unless as a preliminary step there were established over the entire face of the country a national centralized police, of uniform organization, such as we suggested in the articles on Crime to which we have before alluded. Mr. Hill has not taken into account the change which has been induced in the modes of working of the enterprising English thief, by cheapness, rapidity, and facility of travelling afforded by railways. He has not been slow to take advantage of this, and, like the fox, the purely professional thief, who has no other means of living, seldom robs near home.

'There was our old friend, CONKEY BEAU, for instance. We commit no treason to him in betraying his mode of working, because he no longer practises the art of conveyance in this country, being at this moment, we hear, an active and influential member of the Vigilance Committee at San Francisco. Does Mr. Hill think that Conkey stole his *neighbour's* leg of mutton, or that he bore in his appearance unmistakeable evidence of *conviction*? By no means. Conkey was a person of most quiet and, indeed, respectable appearance. He usually took a small house or genteel apartments in some quarter frequented by mercantile or law clerks, where he lived a life of scrupulous regularity, varied only by occasional trips of two or three days into the country per favour of a return ticket, where, as he said, he had an aunt to whom he was much attached. We happen to know who that aunt really was, and that her name was Harris,

but his neighbours at Maida Hill did not know that. Conkey, too, actually had a small sum of money in the Funds, and on the appointed days Conkey was always to be seen in the Rotunda of the Bank of England waiting to receive his dividends. *We* happen to know that his own were not the only dividends that went home in his pocket, but his neighbours at Maida Hill did not know it. Now what would Mr. Hill do with Conkey? On what pretence tie him up or muzzle him. We know that poor Conkey *was* lagged, but not on suspicion; he was caught in the very act of conveying the dividends just received by a respectable maiden lady from her pocket to his own by one of the able detectives of the A division, one of that organization found to be so efficient in the metropolis, of which we wish to see the whole country enjoying the advantage.

‘We might show that it would not practically be very easy for Mr. Hill to get hold of Conkey even after this his first conviction, but we will be generous, and hand over that great artist to the Vigilance Committee of Birmingham; and we will suppose that it has been satisfactorily proved that Mr. Beau has been convicted, that he has failed to show that he obtains his living by any of the means particularized by Mr. Hill, and cannot give sufficient security for his future observance of the law. What will Mr. Hill do with him? Commit him to gaol? To hard labour? No; he can scarcely do that; for if we understand Mr. Hill rightly, he does not *profess to punish* Conkey—he has been punished for his proved offences—he only wants to prevent him from being at large, so he merely inflicts upon him an enforced residence within a limited space *at the public cost*. For how long? Till he evinces signs of reformation and repentance—till he shows an addiction to the reading of tracts, the singing of hymns, and the instructive conversation of the chaplain. The versatile Conkey will soon do that, and in less than two months, having won the love and admiration of all the prison disciplinarians, would be let loose upon the world again, his wit sharpened, and his constitution refreshed by his temporary seclusion. It would be some time before Mr. Hill would catch him again. Or, is Conkey perchance to be secluded within four walls till he is really reformed, and the bad spirit driven out of him? Then the trained, inured, and accomplished Mr. Conkey Beau will remain an annuitant on

the means of his benevolent country till the day of his death.

‘Rely upon it, Mr. Hill, your plan is impracticable. Just that. Practically impossible, and, even if practically possible, it would not be practically operative. A return to the principle of mutual suretyship, which formed the basis of the machinery for the repression of crime with our Saxon ancestors, though in the present condition of society not very possible, would be far more possible and efficient than the adoption of Mr. Hill’s scheme, which would involve the creation of a new principle in law, most objectionable and dangerous, and after all could not be carried into effect without the aid of a police establishment, which would render it unnecessary and useless.

From the ‘Liverpool Mercury,’ October 28, 1851.

‘REPRESSION OF CRIME.

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‘That the experiment, limited, as the learned Recorder proposes, should be tried, we think the existence of the evil is quite sufficient to justify. The surveillance which the police exercise at the present moment is notorious. Thanks to the untiring exertions of such men as Mr. Charles Dickens and Mr. Mayhew, the public are perfectly acquainted with the system; and more than once it has been asked, ‘Why, if the police are so intimately acquainted with the persons of notorious criminals, and the places of their constant resort, does crime remain unchecked? Of what use is this personal knowledge if vice still reigns supreme?’ These are questions which it is most difficult to answer. To say that there is any distinction between guilt which is morally certain, but of which the sufficient legal proof is wanting, is simply absurd; while, on the other hand, were the law to relax its rigour in this respect, it would as unquestionably open the gravest objections on the ground of a most palpable violation of the great constitutional privilege of personal freedom. Mr. Hill’s proposal would seem to steer a middle course; for while, on the one hand, it would secure, to a very great degree, the public from the known violation of the law by *criminals*, it would, on the other hand, infringe the

liberty of the latter to the extent only of calling on them to disprove positive evidence of an irregular and criminal mode of life, by simply showing that the suspected, and already once-convicted, criminal enjoys the means of honest subsistence, either from his property, his labour, the kindness of his friends, the bounty of the charitable, or from his parish. Assuming him, however, to fail in this requisite proof, it proposes to entitle him to his discharge on giving bail, and only in default of being able to comply with any one of these demands is the evidence of competent witnesses as to his general conduct, which must, in the first instance, be of a nature to satisfy the magistrate, to prevail against him. A penitentiary (which, by the bye, should be supported by the labour of its inmates,) would then receive him for a limited period. During the term of his detention, he would, in all probability, be taught some trade, the profits arising from which, after deducting expenses, would serve to maintain him for some little time, at least, after his discharge, without resort being necessarily had to crime.

‘Such is Mr. Hill’s proposal; and, without presuming to offer any more decided opinion on its merits, we submit it to the calm consideration and reflection of our readers. The subject is one of absorbing interest, and is well worthy the attention of the public. Some means unquestionably ought to be employed, either *to provide* for the maintenance of criminals, or at least *to prevent* their maintenance by crime. The first will doubtless be a task of difficulty, and to a certain extent it must be coupled with the infliction of a punishment. The second, if feasible at all, is only so in the mode suggested by Mr. Hill; and for our own part, so convinced are we of the necessity for legislative interference in this respect, we should be almost tempted to advise the trying of the learned Recorder’s experiment in this mode of repressing crime.’

‘*Morning Advertiser,*’ November 8, 1851.

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‘At the late sessions, Mr. Hill repeated a proposition of great importance—‘The propriety of holding in restraint known malefactors, who could be shown on sufficient evidence to pursue crime as a calling, although, by their dexterity or good fortune,

they had been able to elude the proof of any specific offences.' Coming from such authority, we take it for granted that there are people who are well known to live by criminal acts, though never completely detected in the commission of any; and it seems to be a dereliction of duty in those who may be said to have the tutelage of society to suffer them to be at large. But it is not so; their interference with these known, but non-proven malefactors, would be a violation of the liberty of the whole body of the people, although it should produce the benefit of depriving these offenders of the power to injure. In a country where the will of the prince is the law, nothing would be easier and nothing more likely, than the immediate removal of every person of this description from the sphere of his pernicious activity. The case, however, is very considerably altered when the question is the application of such a power to England. We cannot dispense with evidence in anything that regards a criminal; and if we set that aside, together with the rules of law, on account of one class, there will be no longer any confidence of security from wrong felt by the other classes. We do not for a moment dispute the desirableness of such removal as Mr. Hill contemplates, either by seclusion, or absolute exclusion from society; but the question is, whether the evil of suffering them to plunder unmolested is greater than the evil of dispensing with law and the usual course of evidence. We know that there must be a law enacted for the purpose; but the new statute will abolish the old, and be at variance with the fundamental maxim of the constitution, that no man shall be fined or imprisoned but by the judgment of his peers. That maxim has been sufficiently violated by the introduction of summary conviction before a magistrate, and an incredible amount of mischief has ensued from it in the prodigious increase of juvenile delinquents, as Mr. Sergeant Adams has repeatedly demonstrated. Then, if in this instance, departure from the maxim has produced detrimental effects, we have, *primâ facie*, ground for suspecting no better results from the entire relinquishment of the maxim, which will be the case if we proceed to act against people who are known to be habitual malefactors, but cannot be proved to commit a crime.

'The abandonment of the constitutional maxim at once renders the government arbitrary, since it will be invested with a power

of punishing the subject at its own discretion, unguided by evidence of offence, and without any other safeguard for justice than its own unassisted judgment. We do not suppose that Mr. Hill contemplates this result, but that he still has in view that there will be the old laws and the old rules for those who are not known to be habitual offenders. But an experiment, which, if successful, would place every man's person in peril,—for we cannot be assured that succeeding sovereigns and governments will be as wise and as just as the present,—is far too dangerous to be made, even if the prospect of advantage were greater. We must not part with rules in these matters, and least of all with evidence of specific acts of crime. With those who are detected and brought to punishment we can deal more readily; for we can make a certain number of convictions sufficient to justify entire separation from society; but Mr. Hill is speaking of men who cannot be convicted, and who are yet known to be criminal. Is not, however, Mr. Hill mistaken in calling that knowledge, which, as it is not founded upon proof, is after all nothing more than suspicion, more or less strong, more or less probable? Belief is not knowledge, neither is it always the consequence of knowledge. It often proceeds from reasons which are incomprehensible to all but the believer. It is also often an effect of impressions for which the subject can give no intelligible account even to himself. Belief, then, in the matter which we are treating amounts only to suspicion, which nothing but evidence can convert into knowledge. The habits of depredation communicate a character to the countenance, and not improbably to the motions of the body, and an experienced police officer becomes so well acquainted with the criminal physiognomy that he can feel satisfied of the nature of a man's avocations when he sees him; but this sort of knowledge is not sufficient for the magistrate, nor ought it to be, for honest pursuits requiring dexterity and secrecy will communicate the same characteristics on which the police officer confidently relies. Here, then, is a species of conviction and belief which is not knowledge, for it is uncertain; and so we shall find that kind of knowledge of malefactors to be on which Mr. M. D. Hill grounds his proposition to place them under restraint for the prevention of crime.

‘There is another objection. We are required to make the

large sacrifice of confidence in law and justice for a very small advantage, if it be attained. The restraint of known malefactors will prevent crime only so far as themselves are concerned, and so far as their example depraves others. This is, however practical it may be, too narrow a view of the subject of prevention of crime; for that properly comprehends, not merely prevention in the criminal class and their associates, but in all in whom a criminal tendency may exist at any future time. We can accomplish this, which ought to be the great end of legislation, only by cultivating strong moral convictions in the mass of society, which is to be effected by no other means whatever than the education of the people. Gaols and corporal punishments have been tried for thousands of years, and have never succeeded. We are, therefore, weak to confide in such means. No habitual criminals are found in moral communities, and no communities are thoroughly moral which are not well instructed. Show us a high ratio of crime in a country, and we can safely estimate the condition of its population.'

From the 'Manchester Courier,' November 22nd, 1851.

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'One exemplification of anti-popular tendencies has recently occurred. Mr. Hill, the whig-radical Recorder of Birmingham, has broached a notable scheme for purging the body politic. In order to protect the rights of property, which *may* (as witness the evictions in Ireland) be too exclusively protected, he assails the liberty and rights of the poor, which cannot be too jealously taken care of,—he has assumed two principles fundamentally erroneous—the one in political economy, the other in jurisprudence. First: that every man, whatever the state of trade, or of the market for labour,—whatever his character or antecedents in life,—can always, if he will, obtain honest employment. Secondly: that persons accused of wilfully omitting to obtain this employment, are to be deemed guilty till they prove themselves innocent. Summary jurisdiction has been said to define as vagrants 'those whose looks the committing magistrate does not like.' This Birmingham Draco would punish his victims because they have been punished before; would convict a man

of *crime* on the mere surmise that he is *idle*; would sentence to perpetual imprisonment persons vainly endeavouring to enter the ranks of the industrious. He borrows the ferocious logic of the Committee of Public Safety, which treated as proven guilty all who were simply 'suspected.'

'This extraordinary proposal is deservedly condemned by the *Times*. Our contemporary, the *Manchester Guardian*, with others possessing the same regard for popular rights, consistently approves it. 'About the principle involved in the matter (he says), we can hardly suppose there is any question that Mr. Hill is right;' and 'the only objection appears to be grounded on the danger of confounding the innocent with the guilty.' And how does our contemporary meet this, it would seem *unimportant*, consideration?

'The celebrated dictum (he says), 'Better for ten guilty men to escape than for one innocent man to be punished,' has long appeared to us much more sounding than sensible. Why is it better? Punishment is the just award of the guilty, by the same law that impunity is the just award of the innocent. It makes no matter whether we refer justice to considerations of abstract right, or of expediency—whether we define it to be the fulfilment of a divine retribution, or adherence to the tacit compact of human society. In any case, the reasons for exacting a penalty from the guilty are precisely the same as those by which the innocent is entitled to his acquittal, and necessarily of equal force. The right which we profess to discern in the matter is violated in every instance where guilt or innocence is divorced from its appropriate consequence; and the injury to society being measured by the degree in which the law misses its mark does not vary with the side to which it deviates. It is just as bad for one guilty man to escape as for one innocent man to be punished.'

'Alas for the people, when a sentiment such as this finds approval amongst their self-constituted defenders! The proposal thus advocated involves some of the worst features of privilege and of caste. We—it says—the well-to-do and respectable, are wholly out of the reach of such a regulation. What matter if mere working people, sometimes or frequently, suffer under causeless imprisonment or persecution? If the property of the few is thereby rendered more secure in the

least, what signifies the freedom or security of the many? Whether capital or some lighter punishment be thus inflicted upon the innocent, the argument is the same. To refute such an argument we need only point to the irreparable wrong to the *individual* by putting him to an unjust death, and the shock to the moral sense, the general insecurity which the discovery of such a legal murder spreads through society. The escape of a person *supposed* to be guilty produces no such effects. But it is to the flagrant disregard of all the landmarks and safeguards of constitutional freedom, which is indicated by such a scheme, that we desire to call attention. The same disregard is evinced by other proposals, time after time, emanating from the same quarter. Such are the attempts to do away with juries in the first as well as final stages of criminal procedure, and to destroy the popular election of coroners, and the popular constitution of local tribunals; the constant extension of summary proceedings; the substitution of governmental control for local and independent action in educational, sanitary, and other departments. No mere petty economy, no present convenience, however speciously represented, can justify resorting to measures so contrary to all sound principles—all constitutional authorities—all good government.'

From the 'Edinburgh Review,' October, 1854.

* * * * *

'When all [discharged convicts] who can find their way abroad as free emigrants, and by their own pecuniary resources have been put in the way of doing so by such information and facilities as their friends and their clergyman can furnish; and when others have, through the intermediary stage of these refuges, whose extension and multiplication we would urge so warmly, been enabled to reach the colonies, or to find engagements either in domestic service, or on Government works, or with private employers of labour, or as handicraftsmen on their own account; there will still remain a residue, though we hope and believe a very small one, whose reformation is so imperfect, or whose will is so feeble, or whose taste is so incurably vitiated, or whose habits are so hopelessly hardened and corrupt, that their restoration to a

course of honest industry must be abandoned as chimerical, or be looked upon, at least, as more than questionable ; men whom we do not feel entitled to retain in permanent confinement, but yet whom we cannot liberate without strong anticipations that they will return to their old way of life, and live by depredation and outrage as before. Against such we are bound to protect society by all reasonable precautions. Thousands such now roam about the land, the terror and the nuisance of every district they frequent ; hundreds may probably be found still, even after all our plans of reformation and restoration have been put in operation ; men who are well known to the police as habitual criminals, yet who cannot be detected in any specific crime—men who are living well, and even wastefully, yet have no ostensible or honest mode of livelihood. With regard to such we see no injustice—but, on the contrary, much equity and propriety—in putting into action the suggestion of the Recorder of Birmingham.

* * * * *

‘ Mr. Hill’s proposal merely amounts to this—that a certain amount of specified surveillance after liberation shall be *a portion of the punishment to which every convicted offender is sentenced*, or, if you prefer so to express it, a condition of his release ;—that when once a man has been proved to belong to the *criminal population*,—i.e., to that class which habitually preys upon the community,—he shall forfeit that portion of his civil rights which consists in the assumption of his innocence ;—that whereas in the case of untainted citizens the *onus probandi* lies upon their accusers, in the case of liberated convicts the onus should lie with the defendant. In *principle* we see no objection to Mr. Hill’s suggestion. The plea of the liberty of the subject has no force here. When once a man has made himself by crime amenable to the laws of his country, he may justly be deprived of his liberty to any degree, and for any period, which the law deems fit and necessary. Society, which he has menaced and outraged, is obviously just as competent to condemn him to imprisonment for a given term, and to surveillance afterwards, as to imprisonment for a longer term, followed by no surveillance—to a total deprivation of his liberty for a time (that is), and to a partial curtailment of it subsequently,

as to a total deprivation of it for a month, a year, or a life. The convicted criminal has forfeited his social position. Henceforth he is entitled only to that amount of freedom, and to freedom on those terms, which offended society may please to dictate. Nor do we anticipate any mischief in practice, unless such as might equally arise from indiscretion or malice in the administration of any power. That malignant or over-zealous policemen *might*, under such a provision, persecute personal enemies, and throw difficulties in the way of unfortunate sinners, who were struggling back to honesty, is just possible—as it is possible that they may employ their present official position for purposes of oppression and extortion. It is said they do this as it is. It may be so : all power is liable to abuse, and it is the business of the magistrate to watch with vigilance, and to repress with unsparing severity, all such abuses. The provision in question might, however, be so hedged round with precautions as to make it impossible, or nearly so, to convert it into an engine of injustice or oppression ; while for the public security, we believe, its operation would be of the most signal service. In the first place, the previous conviction (or as we should propose, two previous convictions, to secure his belonging to the criminal *class*) of the man in question must be proved ; then the magistrate (or jury) must have the evidence of two credible witnesses that they believe him to be living by depredation. This done, he is called upon to show that he follows a lawful calling, or that he has property of his own to live upon, or that he is supported by his relatives and friends, or that he has friends who are willing to give bail for his good behaviour. If these facts are so, he can have no difficulty in proving them. The certificate of the employer for whom he works, or the testimony of two cognisable householders that he works at a trade, or any explanation of the mode in which he gains his living, would liberate him at once, and bring a severe reproof on the accusers who had summoned him. But practically, as all experienced administrators of justice are well aware, mistakes or difficulties would scarcely ever arise : the persons and the habits of professional and regular criminals are perfectly well known to the police ; and the danger is not that the innocent should suffer, but that too many habitual offenders should

escape. A great number of the worst depredators would contrive to allege some plausible and irrefutable source of subsistence, and might, only too easily, slip through the meshes of the suggested proviso.'

It is amusing as well as instructive to contrast the scruples and fears with which a large portion of the press looked upon my proposal to interfere with the liberty of the subject, fenced about as he was to be by manifold safeguards against error and oppression, with the silent acquiescence in which two years afterwards the whole of the Fourth Estate received the provisions for the re-commitment of a licensee under ticket-of-leave at the mere fiat of the Home Secretary, who is empowered to deprive any such license-holder of his ticket without calling upon him to answer the charge upon which he is again to be sent to prison, and without indeed informing him on what charge he is so dealt with !

The numbers of criminals at large among us having very much increased since 1850, in consequence of the disuse of transportation, the experience thus furnished appears to have greatly mitigated the objections heretofore entertained by the *Times* against my proposal.

'It is quite obvious that we require some stronger modes of prevention or repression than any now in use among us. We can have little hesitation in saying, that within forty-eight hours the police could hand into the Home Office a very complete list, which should contain the names and abodes of the ruffians who infest our streets in the various characters of stabbing assassins, garotters, Notting-hill burglars, and so forth. The list would not be a long one, for it is surprising how small a knot of ruffians can inspire a feeling of insecurity and terror throughout a large population. In twenty-four hours more, a clean sweep might be made of our professional ruffians, amid the general applause; and the town would be delivered from its alarms. Why is this not done? Because it is opposed to the over-magnanimous spirit of British law, which always presumes a man innocent till he is found guilty; and because it is supposed that in troublesome times an arbitrary Government might abuse a power which would necessarily be abused whenever put forth

for any other purpose than the preservation of life and property from violence and wrong. Be it so ; but we must pay the penalty of our chivalry in the shape of daily outrage and nightly fears. We confess we should have little scruple in dealing in a very summary manner indeed with the half hundred Italian ruffians who are now rollicking about Whitechapel and Stepney with their stilettoes and bowie-knives. They, at least, can be got rid of at once ; nor ought the apprehension of what any Mrs. Grundy of the Continental press may say, to deter us from adopting such measures as our own security may require. The question of our own domestic pests is, no doubt, attended with greater difficulty. It is, however, a question which must be very seriously considered ere long, if we are to adhere to the plan of confining our criminal outfalls to the British Isles.*

* *The Times*, November 14th, 1856.

INTRODUCTION TO CHARGE OF OCTOBER, 1853.

ALTHOUGH the transactions referred to in this Charge were of great public notoriety at the time it was delivered, yet they are but imperfectly remembered at the present day; and (which is much to be lamented) have become distorted and exaggerated to suit the purposes of a popular fiction. To avert so far as I am able the danger of these exaggerations being accepted for truth, I have thought it desirable to insert the following narrative from the *Annual Register*. If the reader should desire to pursue the subject further, he may consult the Report of the Queen's Commissioners, in which he will find the voluminous evidence, taken before them, in its full detail.

From the 'Annual Register,' 1855.

CRUELITIES IN BIRMINGHAM GAOL.

'August 3.—At the Warwick Assizes, William Austin, a lieutenant in the navy, and formerly Governor of the Birmingham Borough Gaol, was indicted on ten counts, for having committed various assaults by hooks, nails, &c., upon the person of Edward Andrews, formerly a prisoner in the gaol.

'It appeared by the statement on behalf of the Crown, that Birmingham was formerly, with regard to its criminal business, a part of the county of Warwick. A charter of incorporation, however, having been obtained some years ago, a gaol was erected in 1849, of which Captain Maconochie was appointed governor; and on his retirement in 1851, Lieutenant Austin, the present defendant, was appointed his successor. In 1853, in consequence of some circumstances which transpired in connection with the death of a prisoner named Andrews, a public meeting was held; Government was memorialised upon the subject, the complaint was referred to the Inspector of Prisons and the borough magistrates, and ultimately, in August, 1853, a commission was appointed to inquire, who made their report

to both Houses of Parliament.* The Attorney-General having been referred to, the present prosecution was directed. It was admitted that the governor was entitled to hear all complaints, and to apportion punishments for breaches of prison discipline; but those punishments must be within the limits of the law. It appeared, in connection with the present case, that the boy Andrews, being guilty of noisy and irregular conduct, had been on several occasions subjected to excessive terms of crank labour, the punishment of the jacket, deprivation of food, &c., and that on the night of the 27th of April, 1853, he committed suicide.

‘The evidence detailed a succession of cruelties, for which the misconduct of the deceased certainly afforded no justification.

‘Mr. G. Hillyard, now governor of the Birmingham Borough Gaol, produced the receiving and punishment books of the prison, from which it appeared Lieutenant Austin, the governor, had on many occasions punished No. 574 (the late prisoner Andrews) for various prison offences, by depriving him of his food for long periods, and by placing him in the punishment jacket. Witness produced the jacket and collar said to have been placed upon Andrews. He had also brought one of the cranks with him, and it was then in Court. Witness had been connected with prison discipline before he came to Birmingham. Cranks were not used for the infliction of hard labour in any prison in which he had been employed before he was appointed to Birmingham.

‘William Brown.—I was first-class warder in the Birmingham Gaol in April, 1853: remember the boy Andrews; he was about sixteen years of age, and tall in stature; his conduct and demeanour were generally respectful. I remember seeing the lad in the punishment-jacket on the 19th of April: he was strapped to the wall; his arms were bound across his chest, and he had a stiff collar (about four inches wide) buckled tight round his neck. The prisoner seemed to be suffering much from the effects of the jacket; he had previously called out ‘Murder,’ and requested me to come to him, and slacken his collar and jacket. I kept a book of my own, in which I made notes: on the 19th of April

* Report of the Commissioners appointed to inquire into the condition and treatment of the prisoners confined in the Birmingham Borough Prison, and the conduct, management, and discipline of the said prison, together with the minutes of evidence. Printed 1854.

I find that Andrews was in the jacket from 11 a.m. to 3 p.m.; on the 24th of April, from 7.30 to 10 a.m.: he was on bread and water at the time; he was very wet, and seemed to be suffering very much. I released him on that occasion; that was on a Sunday. I reported to the governor (Lieutenant Austin) the inability of the prisoner to perform the crank labour; I took him to the cell. This was on the 19th of April. The boy said the crank went heavily, or that it was heavier; the governor said that it was right weight, and that he must do it; the boy was crying at the time. I took the jacket off on the 24th of April, by direction of Lieutenant Austin.

‘Thomas Frear.—I was chief warder in April, 1853, and knew the prisoner Andrews: he had 10,000 revolutions to perform during the day; he had 2000 before breakfast, 4000 between breakfast and dinner, and 4000 after dinner. If he did not do the 2000 before breakfast, he would not have his breakfast; and if he failed in performing the 4000 before dinner, he would not be allowed dinner; and if the whole 10,000 were not done at bedtime, he would be put on bread and water. He would be without gas if he had not done his work during daylight. The prisoner Andrews was stubborn at his work. When in the punishment-jacket, I have heard him cry out; when he was in the jacket, water has been thrown upon him; I did it once: it was the practice to throw it over the prisoners; it was the practice when prisoners were shamming, or fainting, or something of that sort. Before I was in the Birmingham prison, I was warder in the Leicester Gaol: the jacket and collar were in use at Leicester, and sometimes I found that the prisoners tore off their jackets; I therefore suggested the use of the collar to keep them on.

‘The Rev. Ambrose Sherwin.—I was chaplain of the Birmingham Gaol, and am now chaplain of the Pentonville Prison. I knew the prisoner Andrews; he appeared to me to be of a mild disposition. I went into his cell on the 19th of April, and found him crying; they were the cries of a person in much pain; the word ‘murder’ was used frequently; he was strapped to the wall, and complained of the compression of his limbs and the tightness of the collar round his neck; I could not get my finger within his collar. I frequently conversed with the prisoner when he was at work at the crank; he always complained

of being too weakly, and so he appeared ; he was always complaining. The last occasion when I saw him was on a Sunday evening ; he had been released from the jacket that morning ; he complained then of hunger and want of food ; he was always pained and anxious. He committed suicide on the 27th.

‘J. Brooks.—I was night warder in the Birmingham Gaol in 1853, and remember finding Andrews dead in his cell on the night of the 27th of April ; he had hung himself to a bar of the window ; the prisoner had been deprived of his bed that night.

‘John Wood.—I was schoolmaster in the Birmingham Gaol in April, 1853. I knew the boy Andrews ; he did not come under my tuition, as he was so frequently under punishment ; I never saw him violent or refractory. The Sunday before his death I was attracted by a loud moaning noise in one of the cells, and I followed the noise until I reached the cell from which it proceeded ; it proceeded from Andrews. I found him with the jacket on, and the floor was covered with water ; in the water lay a pair of socks, and he stood upon them ; his feet were bare ; a bucket was near ; it would hold a large quantity of water. I saw the prisoner released ; I remember he had marks on his arms and body, as if much pressed ; he appeared very weakly.

‘Mr. T. Underhay, crank manufacturer, of London, stated that 5 lb. weight would slightly move the handle of the crank downwards ; but to carry it round 30 revolutions a minute, it would require a power equal to 20 lb. upon the handle.

‘Mr. Kettle.—Have there been any attempts at suicide since Lieutenant Austin left ?

‘Witness.—Yes ; I should say seven or eight ; four or five this year. I generally find they follow each other.

‘For the prisoner it was urged that he was a most honourable and humane man, and had the greatest consideration for the prisoners under his charge. But his situation was a most difficult one ; his prisoners were committed to him sentenced to ordinary punishment, and if they proved refractory it was necessary that he should have resort to some means of further punishment, which should enforce the discipline of the gaol.

‘Mr. Justice Coleridge said that the use of the strait-waistcoat, the collar, and water were clearly illegal punishments.

‘The jury immediately returned a verdict of ‘Guilty.’

‘On the following day, Lieutenant Austin and Mr. Blount, the surgeon of the gaol, were put on their trial, charged with having in various ways illegally assaulted a prisoner named Hunt.

‘It is unnecessary to give the evidence at length. The principal act was detailed by

‘Daniel Hartwell.—I was messenger in the Birmingham Gaol in 1852, and knew the prisoner Samuel Hunt; we generally considered him of unsound mind. I remember the punishment-jacket being put upon him; it had the effect of entirely confining the man; the governor, Mr. Blount, the surgeon, Mr. Pearce, one of the warders, Mr. Wood, and myself, were present. The jacket was put upon Hunt because he was refractory, and refused to go into the reception-cell; he had no jacket on when he was taken from the bath to the reception-cell; the prison clothes were then put on him, and the governor ordered a strait-jacket; the prisoner was striving to bite everybody; I do not think that at that time he knew any one. There was a piece of salt lying in the window, and Mr. Blount requested me to give it to him; salt was left in every cell for the use of the prisoners; I gave it to Mr. Blount, and he crushed it into Hunt’s mouth; Wood was putting the jacket on at the time; the surgeon asked me for more salt, which I fetched from another cell; the salt was no longer in his mouth than he could spit it out; when I fetched another little bit, similar to the first, I gave it to the surgeon, and he put it into Hunt’s mouth, who was still being held by Pearce and Wood; he again tried to bite. I was then called away to another duty; the second time there was, I should say, a tablespoonful put into Hunt’s mouth.

‘Cross-examined.—I never knew the prisoner before I saw him on the occasions to which I have referred. I heard a disturbance and ran down stairs to give my assistance in the reception-cell; the prisoner refused to go into the cell, and kicked Mr. Wood; I assisted, and we got him in; he was too much for one; he was naked when he came out of the bath into the passage, and refused to go into the reception-cell. The prison dress was, I believe, put upon him; while we were putting the dress upon him, Hunt resisted, and made a noise the whole time; the governor and surgeon were sent for, and I believe they came together; Hunt was still resisting and

using violence. As far as I can recollect, the governor and surgeon were not present when we put on the jacket; it was an ordinary strait-waistcoat; he was not strapped to the wall; he attempted to bite everybody who came near him, and made a great noise. Reception-cells are sometimes used as confinement-cells, and that is the reason the salt was there; we always left small quantities for the use of the prisoners. When the salt was in his mouth, he could not bite; but he attempted to bite after the salt was put in the first time; he was quieter after the jacket was put on; the governor was present when salt was put into the prisoner's mouth.

'The evidence both as to the punishment and as to the almost insane violence of the deceased was corroborated by all the witnesses.

'Sir F. Thesiger, for Mr. Blount, urged with great power that upon this occasion at least, whatever might be the truth as to other occasions which were not now in question, Mr. Austin had exceeded neither his power nor his duty. The prisoner, Hunt, had been committed to his custody for punishment, according to his sentence; and this involved, as a natural consequence, that Mr. Austin might do all that was lawful for his safe custody and to enforce discipline. Hunt was well known to the gaolers; he was known to be violent, he had attempted to throw a gaoler from the top of the stairs; and upon this occasion he offered to them the most violent resistance to the performance of their duty. Mr. Austin was summoned to the spot; he came and ordered the prisoner to be secured in a strait-jacket. This was a proper restraint; he had power to do it, and he had not exceeded his power. With regard to Mr. Blount, he also had been summoned to the case. He found the prisoner exhibiting the utmost violence, and raging like a maniac, and likely to throw himself into a fit. The salt was at hand, and salt was a remedy against paroxysms, such as the prisoner seemed about to fall into. It was perfectly true that he did not administer the salt as a medicine, but it was his duty to check the convulsions of rage into which the prisoner had thrown himself. The salt might have been efficacious, not only as a mechanical obstructive, but because, from its nauseous taste, it would probably serve to abate the prisoner's rage. The salt had not been thrust into the prisoner's mouth with unne-

cessary violence, as appeared from the fact that some of it he spat on to the ground, and some into the warder's face. Mr. Blount enjoyed a most excellent character, and was a most humane man.

'Mr. Justice Coleridge said that, in his opinion, there was no case against Mr. Austin, the governor; but he should leave it to the Jury to say whether Mr. Blount had or had not been guilty of unnecessary violence by the administration of the salt.

'The Jury, after a short consultation, acquitted both prisoners.

'Mr. Austin and Mr. Blount were then indicted for having omitted to make certain entries, required by Act of Parliament, in the prison books, and were found guilty in two cases.

'The defendant, Austin, was brought up before the Court of Queen's Bench to receive sentence. The Court heard counsel in his behalf; but the case was deemed of such importance, that the Attorney-General appeared to maintain the course of justice. The Court, taking various circumstances into consideration, passed sentence of three months' imprisonment.'

[The surgeon was not brought up for judgment.]

CHARGE OF OCTOBER, 1853.

GENTLEMEN,

It has long since grown into a usage that at the present season, which is the commencement of the legal year, I should present to the Grand Jury of the Birmingham Sessions a Charge on some topic of criminal jurisprudence, or intimately connected with that important subject. On the present occasion I am about to address you on one to which I am drawn by an irresistible, though painful attraction. Birmingham has recently been the scene of an inquiry which must have filled the minds of every person connected with the town, either by the ties of birth or of residence, with deep humiliation. For myself, I can say that it is the last of a chain of events

among the most unfortunate which have occurred to me in a life now of no very brief duration. Having had, in the course of my professional duties at the bar, and of my official duties as the Recorder of this Court, constantly to deplore the inefficiency for good purposes of the ordinary discipline of our gaols, it was with the brightest hopes that I learned the design of the municipal authorities to build a prison expressly for this Borough ; because, from my confidence in the character of those who took the lead in the undertaking, I expected it would be the commencement of a new era in the treatment of our criminals. These anticipations I fondly thought realized by the appointment of Captain Maconochie to the office of governor of the new gaol. And if I had known that in July, 1850, after an experience of nine months, the magistrates had entered upon their books a minute testifying their satisfaction with his management, I should have considered the wishes and aspirations of years as fully accomplished ; and that my cares would for the future be limited to the agreeable task of watching the development of sound principles, and observing them from time to time produce their salutary effects. But I will not detain you by dwelling on the series of disappointments which unhappily soon overclouded so auspicious an inauguration of this experiment. Gentlemen, deeply as our feelings were wounded when the ‘secrets of the prison-house’ were laid bare to our eyes, you and I have at least the consolation of reflecting that our consciences are not burdened by any participation in act or sufferance with the enormities which have made the misgovernment of our gaol the theme of reproach, assailing our ears on whichever side we bend our steps. But, although we are not responsible for the past, we shall be without excuse for the future, if we do not, each in his own sphere, exert ourselves to the utmost to guard against the recurrence of these disgraceful and afflicting abuses of power.

Gentlemen, we approach the subject with one advantage. We are not called upon to scan these transactions with a view to the censure of the parties implicated in them : we may, therefore, withdraw our attention from all mere personal questions ; and regard what has occurred as an event in the history of the treatment of criminals, from which it is our duty to extract as much of instruction as we can make it yield. And let us

remember for our encouragement the words of our greatest poet—

‘There is some soul of good in things evil,
Would men observingly distil it out.’

We will, then, do our best to calm our minds, and contemplate, if we can, the revolting facts before us exclusively in the light of an important experiment in prison discipline; all the more imperatively demanding our scrutiny, because we are warned by our most solemn duties, as well as urged by our best feelings, to preclude, so far as our power extends, the possibility of its repetition.

The state of things in the gaol, disclosed to us by the evidence before the Commissioners, is one in which those who are intrusted with the control of the prisoners seem to have acted under the impression that they could not possibly err on the side of severity; and that what they had to guard against was too mild a treatment of the individuals committed to their care. In arriving at this conclusion, they altogether mistook, I am persuaded, the sentiments of their superiors; at the same time, I am not very much surprised at their mistake. A general impression appears to have been made, and it is one which I myself have shared, that the objection to Captain Maconochie’s treatment was, that it did not correspond with the received notions on the subject of punishment; in other words, that it was not sufficiently painful to be deterrent. This view may have been adopted in the interior of the gaol; and it may have been strengthened by the appointment of a new governor, known to be what is called a strict disciplinarian. From whatever cause arising, however, it seems quite clear that pain was the great, if not the sole agent relied upon in the management of the gaol. And certainly it cannot be said that the application of this favourite specific was restrained by any of those scruples which would have marred the process if it had been intrusted to persons of ordinary sensibility. The experiment then has been fully tried; and, even by the testimony of those by whom it was instituted and carried into effect, it has utterly failed. This admission cannot be too highly appreciated; as no doubt will be entertained that it could only have been extorted by an overwhelming weight of evidence. We have it now established beyond dispute, that the multiplication of punishments, instead

of reducing the number of prison offences, very seriously augmented them; each punishment may therefore be considered as the parent of a large progeny. The legitimate object of punishment, then, not having been gained, let us see what results have been produced. On certain of the prisoners, who were able to bear up against these perpetual inflictions, a hardening process appears to have taken place, so that they are found soon to return to the gaol after their discharge; but, with regard to those of more irritable temperament, they, alas! are found to have sought refuge from persecution in suicide. Now, putting out of consideration the sufferings of these wretched creatures, forgetting them, if we can, let us consider the consequences which were sure, out of doors, to follow, first or last, such a system of prison discipline. The feelings of the community in whose town such deeds have been committed are lacerated beyond endurance,—popular emotion spreads itself abroad until the whole nation is disturbed, and until even foreign journals are filled with vituperation of English inhumanity; or, what is even more to be lamented, the slaveholder and the despot justify themselves for the wrongs which they inflict on their captives, by pointing the finger at England's cruelties, and they laugh to scorn her admonitions and her censures. Thus in distant regions may the sufferings endured by the inmates of our gaol be made to aggravate the tortures of unhappy beings who never heard the name of our town. Yet, confining ourselves to that town, the consequences of such events as those we have witnessed are deeply to be deplored. Magistrates are lowered in popular estimation, rudely thrust from the bench to be placed at the bar; criminals leave the dock and are raised to the witness-box, their evidence, in the excited condition of the public mind, being received without those doubts and misgivings which, in a calmer state of feeling, would necessarily and properly attach themselves to testimony drawn from such a polluted source.

In fine, the criminal becomes an object of sympathy, as against the ministers of the law. Now, although I am the last man to rob the convict of sympathy, or to desire that he should be regarded only with scorn, yet I cannot but feel it to be a calamity when that sympathy is given to the prisoner at the expense either of the law itself, or of those whose duty it is to carry

the law into execution. Where such is the public sentiment towards criminals, either the law or its administration must be open to severe censure; or, on the other hand, public opinion itself must be in a most unwholesome state. In either case criminal jurisprudence is grievously weakened in its competency to repress crime; for let it never be forgotten that the penal sanctions of the law are of little avail unless they have the additional sanction of public opinion. It is indeed to be feared that years may elapse before the moral anarchy which the events of the last few months have introduced among us, will give way to that wholesome respect for authority, in losing which the cause of order loses its main stay and support. Let me, then, again urge upon you the necessity of balancing in some degree at least these evils, by profiting to the utmost from the lesson which they teach.

Surely the late unhappy experiment will demonstrate to many a mind which has resisted all former evidence, the folly and the danger of giving an exaggerated value to the deterrent principle of punishment; since while we have seen that some prisoners have been hardened by it, and others driven to self-destruction, we do not find that to any it has been the means of improvement.

But whatever shows us the fallacy of trusting to the motive of *fear* as our sole protective against the recurrence of crime, demonstrates at the same time the propriety of appealing to the higher and better feelings of the prisoner.

Gentlemen, if we could shut our ears to the prisoner's cry, and if we could bring our minds to keep him deprived of liberty until his death, we might satisfy ourselves with merely segregating the evil-doer from the society of his fellow-men, simply confining him in a gaol; and we might relieve ourselves from all the labours which have for their object to restore him to his place in society, imbued with the principles of honesty, endowed with the power of self-government, and prepared for the struggles of life by habits of industry. But as neither the laws of our country, nor our feelings as men and Christians, will allow of this oblivion, and, moreover, as we who are in authority now find that even if we could 'steep our senses in forgetfulness,' the people at large will not indulge in the same lethargy, but will arouse us with a voice of thunder—we are driven to

the conclusion that there is no alternative but to aim at so conducting the discipline of our gaols as that we shall do whatever can be done within the limited period allowed by the law for the training to which I have adverted, in order that when the hour of discharge arrives we shall send forth, not a malefactor eager to rush back into his former courses, but a repentant fellow-man, determined to act honestly, and to do his duty in that station of life to which it has pleased God to call him.

Gentlemen, I am deeply impressed with the belief that the reformation of the criminal is as truly and sincerely the object which the magistrates of this borough have had in view in the management of the gaol, as I believe that it is my own; and moreover, I believe the cruelties which have been perpetrated were unknown to them, and not only unknown but unsuspected. Again, it is my further belief that the bench of magistrates of the town of Birmingham numbers upon it many gentlemen whose convictions of the impolicy of harshness, and whose desire to rule by hope instead of by fear, are as strong as they are in any one of you whom I have now the honour to address; and I cannot therefore but indulge the consolatory anticipation that the future management of the gaol will evince a conformity with these principles. Of one of that body, the Chairman of the Visiting Justices, who now sits at my right hand, I speak from an intimacy of more than thirty years. I know well his kindness of heart, I know how thoroughly he has studied the principles of prison discipline, and I know that his opinions are in conformity with my own. He had been in office but a very short time prior to the discoveries which led to the inquiry, and immediately on these discoveries he exerted himself with zeal and effect to put an end to the abuses which he in common with ourselves so deeply laments.*

In short, I hope and trust that we are destined to witness a return to the system of prison discipline advocated by Captain Maconochie, so far at least as the restrictions contained in the laws applicable to the government of prisons will admit of such a course. Now, Gentlemen, what is that system? I speak not of details, but of leading features; and, as much misconception is abroad on the subject, permit me to call your attention

* Mr. Wills, the author of a valuable treatise on Circumstantial Evidence.

to a few main points, by which you will be enabled to form an opinion as to whether or not his principles approve themselves to your judgment. The Captain proposes to treat a prisoner who has fallen into crime as a person is treated by society, who, by his indolence, his prodigality, and his imprudence, has fallen into adversity. Such a person is left to work his way out of the unhappy position in which he has placed himself, and the only difference which the Captain would make results from two circumstances—the one is, that as the misconduct of the criminal is graver, so must his adversity be more profound, and his sufferings, for his own sake as well as for that of society, more severe, than those of his brother in affliction; such severity being essential to his reformation. The remaining circumstance is, that the criminal being in captivity, his actions are more completely under control than is the case with the individual to whom reference has been made as being in a position somewhat analogous. Here, again, the power over the criminal, resulting from his subjection to the governor, is to be used for promoting his reformation, and for that object alone. Yet, believe me, Gentlemen, if the work of reformation be so prosecuted as to lead to a successful result, there must be suffering enough endured by the convict to accomplish all that deterrents, truly estimated, can be expected to accomplish. In confirmation of this opinion, permit me to read you a passage from the work of a near relative, who devoted fifteen years of his life to the duties of Inspector of Prisons, partly in Scotland and partly in England, and who has acquired therefore an experience so varied and ample as it has fallen to the lot of few men to attain.

Speaking of the Scottish prisons, in which, mainly by his exertions, much progress had been made towards the establishment of right principles of prison discipline, he says:—‘I believe the notion that the prisons in Scotland have, to a great extent, lost their penal character, to be quite unfounded; on the contrary, I am of opinion, notwithstanding all that has been done to improve the condition of the prisoners, that to the really criminal in habits the prisons were never so much dreaded as at this moment.

‘I attribute the mistake to the superficial view likely to be taken by any one who walks through one of the present prisons

in Scotland, and who does not take various matters into consideration which it is necessary to bear in mind. Such a visitor will see a number of people neatly dressed, clean, in small rooms certainly but sufficiently warm and tolerably well lighted, busily engaged at spinning, weaving, shoemaking, mat-making, knitting, sewing, picking old cords, and various other kinds of work; and in his round he will probably meet the chaplain and teacher, employed in exhortation and instruction.

‘ If he waits till dinner-time, he will see the prisoners get a meal of plain but wholesome food; and if he should possibly stay till bed-time, he may see them comfortably lodged for the night in their hammocks. And such a visitor may say to himself, on quitting the prison, ‘ Why, what is there penal in all this? These people are probably better fed, better clothed, and better lodged than they would be in their own houses, or than many an honest man is who never injured society! Such a system must act rather as a premium to crime than as a terror to evil-doers.’

‘ But let the visitor reflect that, first, as respects the honest workman, the prisoner has entirely lost his freedom, and ceased to be his own master; that he is not only cut off from family and friends, but that, generally, he is deprived of companionship altogether; that he must neither whistle, sing, nor shout; that, day after day, and month after month, except at the intervals of exercise, he is confined within the four walls of his little cell, Sundays and holidays affording no relief, the very changes of the season almost unknown to him, for all, at least, that he can partake of their charms,—let him think of this, and he will probably be of opinion that, though the prisoners were fed on turtle, instead of barley broth, and slept on down, instead of straw, there would still be few applicants among the honest working class for permission to occupy their places.

‘ And let the visitor, further, make himself acquainted with the habits of criminals, and with their ideas of comfort and luxury, and he will probably come to the conclusion that their distress must indeed be severe, and such as to make their being at large dangerous to all around them, before such persons would voluntarily enter a prison.

‘ For what, owing generally to wretched training, are the

habits of criminals? Idleness, late rising, and indulgence in drinking, smoking, and gambling. And what regard is paid to these habits, however strong they may be, on entering a Scottish prison? Not the slightest. However great a sluggard, he must rise, the very morning after his admission, even in the middle of winter, when the clock strikes six. Then, although he would probably prefer remaining in his dirt to the trouble of making himself clean, he must immediately wash himself, and that thoroughly. So soon as that is done, he must, if he has been tried, begin a task of labour, with the prospect of losing his dinner if he be sullen and refuse to complete it. Should he ask for a companion, he will be at once refused. Between times he may wish to comfort himself with a pipe, or at least with a pinch of snuff; but, no, the rules inexorably and most properly forbid all luxuries, especially such as foster habits of expense. At dinner, he may ask for at least a little beer; but he is again refused, and he finds that, however much against his will, he has suddenly become a member of a total abstinence society. As for opportunities of gambling, he has neither anything to stake nor any person with whom to play.

‘ When it is considered how painful an effort is generally necessary to break through a single bad habit, it may be judged how much a person, under such circumstances, must suffer; and it will be seen that that which is pleasing to the eye of the visitor, and excellent in itself, is often obtained with much though necessary pain; and the delusion will be dispelled that the prisons have ceased to be places of punishment.

‘ I have no doubt, indeed, that, except the weaker prisoners, who used to be exposed to the tyranny of the stronger, all the worst criminals suffer much more punishment now than when they were allowed to pass their time in drinking, gambling, smoking, stealing from each other, and recounting their misdeeds.’—*Hill on Crime*, pp. 188—191.

Having read this passage, let me pause for a moment, and remark upon that portion of it which speaks of the dinner being kept back upon the non-completion of the appointed task; you, Gentlemen, will not be hurried into condemning the *use* of an expedient because of its *abuse*. With such qualifications as discretion and humanity will suggest, it is right to make the supply of food depend upon the exertions of the prisoner, although it

is a gross perversion of such an expedient blindly and recklessly to withhold the sustenance which is needful for supporting his strength, and then to urge upon him the completion of a task to which he has thus been rendered incompetent.

Gentlemen, to be called upon to make bricks without straw would seem to be a slight oppression in comparison with that of being urged to make a crank revolve thousands of times when the sufferer is trembling and faint for lack of nourishment.

But to return; the crime of the prisoner having plunged him into adversity, let him be put into a state of gradual progress towards redeeming his position—a progress which commences at the lowest point, and is, or aims at being, a continued rise up to the moment of his discharge from the gaol. Let him, then, in the first instance, be consigned to a separate cell, kept without employment, with merely such allowance of food as nature requires, and visited only by the prison officers, the chaplain, and such humane persons as take upon themselves, under the permission and regulation of the magistrates, the duty cast on all Christians by the highest authority, of visiting the prisoner.

And here permit me to read another passage from the work which I have just cited. ‘Much valuable assistance in the mental, moral, and religious instruction of prisoners, may be obtained by well-selected volunteers from the surrounding population; for, to the honour of humanity, the number who thus offer their gratuitous aid is generally sufficient to admit of a considerable choice.

‘Those, and they are many, who object to such assistance, should recollect that Howard, the first and greatest prison reformer, was himself a volunteer; and no less so the excellent Mrs. Fry, who worthily followed in his footsteps.

‘The feeling on the part of the prisoners, that persons who thus, of their own accord, come to visit them, and to labour for their improvement, must have their interest at heart, and cannot be discharging a mere duty for which they are paid, adds much to the power of such instruction; and if discreetly used, this power may be turned to very good account. The ties, too, which are thus formed with some of the best of their species, feeble as such ties may appear, are often of inestimable value after a prisoner’s liberation, as is shown by the large number

of offenders who have become respectable members of society through the instrumentality of Mr. Wright, of Manchester.

‘The divine provision by which he who dispenses good thereby benefits himself, appears to be a strong inducement to this good work. Some time ago, a lady of high rank applied for permission for herself and others to visit the female inmates of a small prison in Scotland; wishing to come, not as a condescending patroness, but, as she herself expressed it, ‘as woman to woman,’ with a conviction that she and those associated with her would derive more profit even than the prisoners themselves.

The following paragraph on the benefit of such visits as I have spoken of is taken from the Report, for 1850, of the Physician of the Eastern Penitentiary, Philadelphia:—

‘‘I have heard various estimates of the amount of intercourse afforded to our prisoners, but they were all very much exaggerated. My own observation and the opinion of our most intelligent officers satisfy me that the average daily conversation of each prisoner does not exceed, if indeed it equals, ten minutes. This is quite too little.

‘‘Men of strong and cultivated intellects, with books for companions, might bear uninjured this privation of social intercourse; but the ignorant and weak-minded prisoner must be more or less injuriously affected by it. If it were not possible to remedy this evil, how far it might be urged against the system I shall leave others to determine; but, happily, there is no amount of intercourse necessary, that cannot be afforded with the greatest ease. Heretofore, the individuals permitted to visit the prisoners for the purpose of moral instruction, &c., have been invariably confined to the more educated classes. I believe this to be an error. Among those of our citizens who have less pretensions to intellectual culture, many will be found who possess every qualification necessary to render their intercourse with convicts highly beneficial. I would therefore earnestly recommend that their services be immediately solicited.’’—*Hill on Crime*, 271—273.

Gentlemen, since this work was written, an additional reason for encouraging the visits of charitable individuals to the gaol has become obvious to all who reflect on the subject. Such visitors admitted to each prisoner and gaining his confidence, would form a check against oppression, which, as we have now

discovered, requires all the checks which invention can suggest. That criminals should be secluded from indiscriminate association with persons from without cannot be denied ; but neither, on the other hand, can it be denied that abuses readily creep into all establishments from which the light of publicity is withdrawn. Probably the regulated intercourse with the world which the author recommends, would be found to adjust contending objections better than any other arrangement.

The prisoner, precluded from his habitual indulgences, and deprived of all employment, in the majority of instances will feel his position so irksome, that labour, if it be associated in his mind with improvement in his condition, will be received as a boon rather than as a task. Here the question arises as to what species of labour is most desirable for him ; and in determining it we must bear in mind that one great object being to raise his aspirations, and gradually to produce a feeling of self-respect, there should be nothing in his ordinary treatment to interfere with such a process. I therefore consider it essential that the employment should consist of labour which produces a useful result. If the labour be, commercially speaking, profitable, and known by the convict to be profitable, so much the better : yet even if it yield no profit to the managers of the prison, but, on the contrary, entail some slight pecuniary burden, still it is of such importance to form habits of willing industry and inculcate respect for labour, that it would not be wise to be scared by such a loss. That no such loss need be sustained, and indeed that prisoners may be employed so as to reduce, if not extinguish the cost of their sustenance, lodging, and guardianship, there is abundant evidence to prove ; and it is obvious that the recent advance in the price of labour gives new facilities to such undertakings. For many reasons, it is fortunate when agriculture can be made one of the main employments of prisoners. With regard to the convicts in the Birmingham Gaol, such an application of their labour is not possible : but surely many handicrafts may be found, if diligently sought, and if the prejudice against turning the labour of prisoners to profit were exploded from the minds of the managers. That it can be advantageous to society to prevent any of its members from earning their subsistence, whether such members are in confinement or at liberty, is a paradox against which our common

sense revolts ; and which has been too often exposed to justify my occupying your time further on such a topic. Let, then, the prisoner be employed in productive labour, if possible, and let him enjoy a portion of the profit, partly in bettering his position, partly in accumulating a store to assist him upon his discharge ; and, by all means, let the prisoner himself have some limited option in the disposal of that fund, with a view to exercise his power of self-government. No doubt the strongest motive to frugality that could be offered to him would be that his self-denial, with regard to the indulgences which he might purchase for himself in gaol, should operate to shorten the duration of his imprisonment ; but here the law interposes, by making the period of discharge a fixed point of time, instead of one to be accelerated or retarded by the conduct of the prisoner, a provision on which Captain Maconochie strenuously insists : and, therefore, the managers of prisons are thrown upon the necessity of inventing other motives for stimulating the industry and checking the disposition of the prisoner to immediate indulgence. But these difficulties, though great, are not insuperable ; and much has been done, even with the law as it is, to induce habits both of industry and thrift. And when it is considered that it is to the want of these habits that so large a portion of the crime of the country may be attributed, no exertion will appear too great which will insure these happy results.

In the remarks which I have made on productive labour, I have, by implication, condemned the employment of the treadmill and of the crank. With regard to the latter, however, I am not insensible to the arguments which are adduced in its favour, and which deserve attention. The crank, when properly constructed, measures the amount of force necessary to produce a given number of revolutions with great accuracy, and with equal accuracy it registers the amount of labour performed ; and it has been said with regard to the unproductiveness of such labour, that to the prisoner it *is* productive, and has all the encouraging effect of productive labour on his mind, if by the regulations of the gaol, he is rewarded for such labour to the same amount as he would receive if it in truth yielded a profit to the managers. And I think it probable that, with very young persons, the mental effect here described may be produced. At the same time, I must believe that they will very

soon feel the repugnance which belongs to all exertions essentially barren of useful or agreeable results. It is possible, however, that as a step in his upward course, if it be a step which he has the opportunity of quickly leaving behind by well-directed endeavours to mount higher, the crank may be deserving of a place in a judicious system of prison discipline.

But experience has shown that it is liable to great abuse, and that its employment should be jealously watched, and restrained within very narrow limits.

Hitherto I have considered the criminal as gradually working his way out of adversity, without a relapse during his progress; but this will not be so; in fact, habits of industry and self-government are not formed without numerous efforts, many of them failures. And here, as in the world at large, failures should bring upon the individual the natural penalty of retarding his progress, by thrusting him down a few steps, and making it imperative upon him to incur the labour of remounting them. After a time (and in the majority of cases, no very long time), the prisoner, by his conduct, will have given proof satisfactory to the mind of a skilful and experienced governor, that his aspirations are steadily directed to right objects, and that his failures, when failures occur, spring from that incapacity for making our actions conform to our sense of duty, which every man among us who faithfully searches his own heart must feel is more or less the common lot of humanity. . 'The good that I would, I do not, but the evil which I would not, that I do.' Such is the confession of the great Apostle of the Gentiles, and when *he* was conscious of this infirmity, who of us can claim exemption, and hope to be believed?

The efforts of a prisoner in this frame of mind, it will at once be admitted, deserve encouragement, and his errors must be dealt with patiently; but, as there is all the difference in the world between kindness and indulgence, sympathy for his unsuccessful endeavours must never go to the length of relieving him from the natural consequences of his failures. When the desire to act well has been thus implanted in the mind of the prisoner, the reason for secluding him from the society of other prisoners in a like frame of mind is at an end, and the reason ceasing, the practice should cease with it. Captain Maconochie has found the best effects to result from bringing prisoners thus

desirous for improvement into society with each other, dividing them, however, into small classes. And he has found also, that by making the penalties arising from failures to fall, not upon the individual exclusively, but upon the little band of which he is a member, the social feeling thus called into action operates more powerfully on the mind for good than could be effected by appealing merely to selfish interests.

I cannot intrude upon you any further details illustrating this great principle of treatment, the pith of which is, that instead of dragging the prisoner through a dull routine of duties, like that of a horse in a mill, in which he starts every morning at the same point to find himself at that exact spot every evening, he is exposed to the stimulus of an onward course, in which he may raise himself from a state of adversity to one of comparative enjoyment; his prison life being fed with hope, and that powerful motive being so directed as to cause the individual to cultivate precisely the dispositions, the energies, and the habits which will lessen to a minimum the chances of his relapsing into crime. But do not let it be supposed, Gentlemen, that every prisoner can at all times be left to the influence of the higher motives without the necessity of ever calling on those of an inferior class. The occurrences which we deplore are, among other evils, not unlikely to produce for a time a sympathy with criminals which may have a morbid action on the public mind; and an indisposition may be created to distinguish clearly between kindness and indulgence. These terms, which appear to the careless observer nearly synonymous, are 'wide as the poles asunder.'

Kindness, while it is most parsimonious in administering pain, does not shrink from inflicting it when reasonable expectation of profit will justify the outlay. If, by a small portion of present suffering, a great amount of future good may be obtained, either for society or for the individual (and, *a fortiori*, if the pain inflicted shall accomplish both these objects), then to withhold it would not be true kindness, but, on the contrary, false indulgence.

But let me impress upon you that skill, experience, and enlightened humanity are to the full as essential for the discharge of this delicate and most responsible duty, as for the performance of those of the surgeon or the physician. The

duties of a prison governor demand a fund of talent, right feeling, and knowledge of character. The governor who rises to the height of his calling stands upon a level with any member of any profession, and he ought to be allowed as wide a discretion as the law will permit; moreover, if I have not taken an erroneous view of the question, the law itself will require to be, from time to time, expanded, as the public mind becomes well informed upon the subject, in order to leave him unshackled—though not unwatched—in the exercise of his arduous functions.

Let me, Gentlemen, point out one of the many distinctions which he will have to act upon, and which I particularize because it throws light on some of the errors which have crept into the administration of our gaol. So little has the science of the treatment of criminals been cultivated, that it is altogether deficient in that variety and accuracy of terms without which it is very difficult to gain clear conceptions, or, having gained them for ourselves, to convey them to others.

For instance, we use the word *punishment* to express pain inflicted under circumstances very distinct in their nature, and where the distinction leads to divergent consequences. Pain, by way of punishment, is administered as retribution for crime. The criminal may repent him of his offence, and he may hate it as sincerely as those who are punishing him; but he has no power over the past. He can submit to the penalty, and if the punishment is not capital, he may avoid its repetition; but with regard to the crime which has produced the punishment, he is as powerless over it as the child unborn.

But pain may also be inflicted for the purpose of coercing the criminal to perform some act, or to refrain from some act, which he is then omitting or committing; and when inflicted with this purpose in view, it is still called punishment.

Here, however, the continuance of the pain, supposing the act or its omission to be within his competency to perform or omit, is the choice of the criminal himself: and in such cases, that pain may be justly, and even humanely, not only continued but augmented, until the proposed effect is produced; assuming always that the proposed effect is one which it is right and salutary to produce. Now, surely every man ought, if possible, to support himself, and not cast that burden upon the public; and

the fact of his being a criminal is anything but a justification for his exempting himself from this duty. If, then, the labour demanded from him tend to lessen that burden upon society, and if the task be clearly within his ability to accomplish, I know of no reason why he should not be goaded by pain to perform it, supposing the resources of encouragement to have been previously exhausted; and as the cause must be made sufficient to produce the effect, if slight pain should fail, it must be rendered more intense until the object is attained, that is, until the prisoner submits himself to his duty. But, then, what a responsibility rests upon the head of him who commands and superintends this delicate operation! The man who can undertake it, except at a great sacrifice of his feelings, is unfit for it. The man who undertakes it without having studied the science which he is carrying into practice, is unfit for it. The man whose scientific studies have not been chastened and corrected by experience, is unfit for it. The man who in his exactions can even approach the limit of the prisoner's strength and capacity to perform his task—that man is totally unfit for any office giving him power over his fellow-creatures. What, then, shall we say of cases in which food, the *pabulum* of strength, has been withheld, and the labour has still been extorted? But even if the frame had been sustained by nutriment, and if the task were one which a willing agent might with ease fulfil, a distinction is to be observed of great importance, though naturally escaping the attention of the sort of mind which appears to have applied itself to the question. It is familiar to the psychologist that the competency to a task, even of unskilled labour, is not to be measured altogether by the power of thews and sinews, but the mental state of the agent is to be brought into consideration. If the labour is one in which he takes delight, whether because he loves it for itself, as we do the sports of the field, or because it is sweetened to him by the hope and expectation of some good arising to him from its performance—in either of these cases his capacity for it is increased. He is able to do more than under other circumstances; and, *e converso*, when the task is disgusting to him, when it is loaded with a sense of degradation, when his wishes are drawing him backwards instead of urging him forwards—in that latter instance will his power of labour be essentially

diminished : but the rude, ignorant, irritated, unreflecting task-master knows nothing of all this, and imputes to the unhappy convict as a new offence that failure which arises from irresistible depression of body and mind, and visits it accordingly.

Let me further observe, that the necessity for any resort to force in a well-conducted gaol is rare indeed. There are natures so unhappily constituted as not to yield to encouragement, but to demand for their government the stimulus of fear, or the infliction of bodily pain ; where, however, as in a gaol, their conduct is under control, and where the better motives to well-doing can be so easily and effectively supplied, the number who will not yield to those better motives is but small, and consequently a great amount of punishment is a sure criterion that the prison has something rotten in its management. Gaolers instinctively feel the truth of this position : but if they imagine that they avoid its application by drawing untenable distinctions between *punishments* and *privations*, they must be quickly undeceived. Let me, Gentlemen, prove and illustrate what I have said by the experience of a young establishment at no great distance from our prison, as measured in miles, but further than arithmetic itself can express if measured by principles. I refer to the Reformatory at Saltley, established by the wise benevolence of our most excellent friend and neighbour, Mr. Adderley, the member for North Staffordshire, with the aid of Mr. Bracebridge, and other gentlemen—some of this town—who (acting with him) have made what I am in hopes will prove an admirable choice of a governor in the person of Mr. John Ellis. Those of you who are acquainted with the spot of which I am speaking, will be aware that the soil, which by the exertions of the boys under Mr. Ellis's treatment is now becoming a productive garden, is nevertheless of a nature to demand a great amount of labour for its drainage and cultivation. The lads employed in the undertaking, who had not been much used to labour of any kind, and still less to labour requiring so much bodily effort, became disheartened, and exhibited to their friend and master their hands blistered and covered with blood, by their weary toil with the spade. What was to be said ? Nothing : it was not a case for a speech, but it was at the same time far from hopeless. Mr. Ellis, who works with his lads, but who of course had made no complaint,

opened his own hands to their view. They saw that except in fortitude he had no advantage over themselves; this was enough: they were ashamed to have faltered; they returned to the charge with a revulsion of feeling, bore the pain without a murmur, were rewarded by the sight of the task accomplished, and by finding not only their hands, but their whole frame gradually hardened and inured to their lot.

Again; this Reformatory is, fortunately for itself, placed near the Diocesan Training School, and the enlightened and accomplished Principal of that valuable institution takes a deep interest in the welfare of the humbler establishment. The water for the Diocesan School, it appears, is drawn from a well of unusual depth, and to bring it to the surface in sufficient quantity is a work of no slight labour. Some time ago he offered a contribution of six shillings per week to the funds of the Reformatory in payment for this daily task. The lads, who, by a plan which I have not time at the present moment to explain, have an interest in the augmentation of all the funds applicable to their maintenance, undertook with cheerfulness the employment which had thus been proffered. The pumps are set in motion by cranks, which admit of two persons to labour at the same time. After fifty revolutions, there was a change of boys, but notwithstanding this relay, the workers found their task very severe, became discouraged, and complained to the master that the cranks of the pump were harder to turn than the cranks of the prison. Mr. Ellis promised to see what could be done, reminding the lads that the loss of six shillings a week was a matter of no trifling importance—a view of the question in which they all concurred. He then, having selected a stout-hearted colleague from the group, went himself to the pump, when he and the partner of his toil turned the crank till they had numbered five hundred revolutions, the main body looking on as spectators. They were still continuing, when as by one impulse the lads drew them away by force, and returned with cheers to their work, since which time no complaint has escaped their lips.

Gentlemen, I have laid before you the qualifications required in the governor of a gaol. I sincerely believe you once had such a governor as I have depicted, and never shall I cease to deplore his loss. Be it clearly understood, however, that I

mean not for a moment to disparage the governor who has just been appointed ; what little I know of him being altogether to his advantage. Others, Gentlemen, may have had a right to undervalue Captain Maconochie from their own superiority of talent and information. For my part, I must avow that from the study of his writings I have gathered much valuable knowledge that I could find nowhere else ; and have been able to solve difficulties and to adjust differences which had long baffled my unaided exertions. In recommending him for the office of Governor of the Gaol, I fondly hoped I had conferred a benefit on the town, and, through the town, on the country at large. Alas ! Gentlemen, from the operation of causes well known to you, and most painful for me to dwell upon, that hope, however bright at first, was soon quenched in disappointment. I deplore the result for the public ; I deplore it for myself, who have to consign prisoners to the Birmingham Gaol ; I deplore it for Captain Maconochie, whose removal has been followed, even at this distance of time, by consequences which, however painful to himself, are doubly painful to me who brought him amongst us, and so far was the cause, although the innocent cause, of exposing a most honourable man to treatment, in my judgment, utterly undeserved, and, for aught I can see, altogether unprovoked. Let me indulge the hope that, when calm reflection has succeeded to excitement, reparation will be offered for an injury, the magnitude of which none are by character and station better able to appreciate than those from whom the wrong unhappily came.

But here, again, the history of our Gaol, short as it is, furnishes matter for useful reflection on the unhappy differences which arose between the magistrates and the governor. The control of English Gaols is vested in the magistrates, acting by a committee of their body, who are called the visiting justices. Now the code of laws regulating Prisons, the administration of which the visiting magistrates have to superintend, was framed when the circumstances of Gaols were very different to what they now are, and the principles upon which they ought to be administered were viewed in a very different light from that which is now dawning upon us. Until the illustrious Howard (whose enterprise was no less than to reform all the prisons of Europe) had by his arduous labours, crowned at length with

martyrdom, forced the attention of the civilized world to the disgraceful state of the Gaols in all countries, the only care of the authorities appears to have been to keep the prisoners from escaping; that is to say, from an escape by breaking out of prison. One means of evasion was indeed left open to them. Their noisome dungeons were the abodes of fever, which, less cruel than either the law or its administrators, oftentimes put a speedy termination to their sufferings. But the gaol fever was found to be no respecter of persons. The poison floated up from the dungeon into the court; and when judges, grand jurors, and counsel became the victims, it was time to be stirring. Selfish fear and benevolence working in the same direction at length cleansed the charnel-house, gradually abolished the dungeon, or underground place of confinement, and stimulated exertions to preserve the prisoner in health. Some sort of religious instruction was also afforded; but little was done effectively for the inculcation of sound principles, and still less towards the formation of good habits, especially habits of industry. Even after the improvements to which I have referred, it is quite clear that the duties of a visiting justice were neither very onerous, nor did they demand any skill or peculiar knowledge for their exercise.

But now that we are aiming at such a treatment of the criminal while in prison as shall induce him and enable him to avoid a relapse into crime, the ground is changed; and we must either demand that our visiting justices shall possess the professional skill which would enable each of them to govern a Gaol himself, or they must, in the main, restrict themselves to making a wise and prudent choice of a governor; leaving him as much as possible unshackled, but taking care to exercise such vigilance as to give them a thorough insight into the real working of any system which he may adopt. But here comes the difficulty. The duties of the visiting magistrates are prescribed by various Acts of Parliament, and have relation rather to the old order of things than to the new. The statutes evidently regard the governor as a mere servant—as the rude, uncultivated being who formerly answered, and too often still answers, to the name of gaoler—and are totally inapplicable to a person occupying the station and endowed with the feelings of a gentleman; and, what is more, who ought to be far better able to give instruc-

tion to the visiting magistrates than they are to furnish it to him. No two human beings can be more distinct than the governor and the gaoler. What the governor ought to be, it has been one object of my remarks to make understood.

In the case of the mere gaoler, under the old state of things, high qualifications would have been thrown away. No man possessing them could have fulfilled—I will not say his duties—but I will say what were considered to be his duties; and at all events it was right that such a person should be under strict control, that his discretionary power should be reduced within the narrowest limits, and that his main occupation should be to carry the orders of his superiors into literal execution. Gentlemen, it is but common fairness that these difficulties and discrepancies, and these sources of misunderstanding, should be borne in mind, when we feel tempted harshly to criticise the conduct of visiting magistrates. The office of Justice of the Peace has become of late years one of great difficulty to execute, so as to avoid giving cause of animadversion. For myself, I am more inclined to admire the courage and self-reliance which carry magistrates, without the training of professional education, through the difficulties and dangers which beset their path, than to complain of errors which to my mind are only matters of wonder for the infrequency with which they occur.

It has been the constitutional policy of England to engage the services of an unpaid, and consequently of an unprofessional magistracy. Nor, however opposed to theory such a policy may be, can it be altogether condemned by any one who has had the opportunity of observing the state of countries in which all offices are filled by persons who seek in such employment the means of subsistence. We must be content to endure the evil with the good; and above all must we avoid the error of fixing our minds on the evil alone, and the ingratitude of visiting it with unmeasured severity on individuals who have during many years given us their time and their labour, very much, on the whole, to our benefit.

Gentlemen, the subject of prison discipline, always important, is now momentous. From causes beyond the control of the Government, transportation is at an end, or so limited that its action in clearing our land of confirmed criminals is paralysed. By an act of last Session, the vast majority of convicts will

now, after some imprisonment, by way of probation, be let forth upon society under certain regulations, the effect of which is an untried experiment.

Earnestly do I wish that experiment success; but no one, I am certain, who is acquainted with the criminal class, can contemplate its possible results without the deepest anxiety. Probably, Gentlemen, this impression will be made on no minds more deeply, than on those of the statesmen who were led by the best motives to devise this important measure. The easy injustice of casting the home-bred criminal on our colonial fellow-countrymen has hitherto enabled us to evade (at least to a considerable degree) the consequences of emptying our prisons of criminals who, not having been made better by their punishment, only awaited an opportunity to recommence their course of depredation, of violence, and of the corruption of others. Such opportunities are, I much fear, about to be multiplied ten-fold. Putting, then, the criminal himself, his capacity for happiness and for misery, his hopes here and hereafter, entirely out of sight, ought we not, in mere selfishness, to strain every nerve to accomplish the work of reformation while the prisoner is yet under our guidance? Will you still, after centuries of experience, put a blind confidence in the effect of deterrents? Have we not seen them pushed to an extreme which has disgusted the whole world? And yet do we not find it admitted by the agents of this hideous infliction, that, even when carried to that extreme, they effected no good object? They failed even while the prisoner was still under the authority which imposed them; and if prison offences could not be prevented by a severity from which there was no escape, and for which he would suffer almost on the instant of his offending, is it not absolute fatuity to expect that the memory of that severity will operate upon his mind after his discharge, and when certain punishment, following instantly upon his misconduct, will no longer impend over him?

Mark, Gentlemen, the position in which the managers of prisons now stand. They have found that deterrents raised to their highest intensity fail of success; but they have also found that if these expedients had succeeded in their object, public opinion would resent all such practices as an outrage upon public feeling.

Gentlemen, do let the opponents of the reformatory principle make some approach to consistency. Deterrents have been weighed in the balance and found wanting. If we are, nevertheless, to abandon the work of reformation, let our opponents face the legitimate consequences of their own doctrine, and petition the Legislature to inflict upon criminals perpetual imprisonment. The evil results of a stream of unreformed criminals issuing from the gates of our prisons are such as I for one cannot contemplate with a steadfast mind. The wretch trained to crime and inured to punishment is a beast of prey, in comparison with which the most ferocious of the menagerie are gentle and harmless. It is almost impossible to take up a newspaper at this period of the year without the eye resting on a narrative of some outrage which, if it had occurred in Spain or Italy, and if the perpetrators had been called *banditti*, or by some such name of mysterious terror, would have been made the subject of boastful comparison between the social condition of England and that of other nations.

And let it be remarked, that these atrocities are not the offspring of public adversity. Never, in any period of our annals, were the necessities and even the luxuries of life, so easily attainable by honest labour as at the present moment. Consider, then, what is before you, when the hordes of lawless men now roaming the country shall have been reinforced by the addition of all the felons who formerly poured into New South Wales and Van Diemen's Land; and ask yourselves whether those who are labouring to awaken the public mind to the necessity for securing reformation before the prisoner is restored to his liberty, deserve to be stigmatised as mere sentimentalists; whose feelings are so absorbed in sympathy for the guilty, that they have no care for the security and welfare of the innocent?

For my own part, Gentlemen, I declare now, as I have always declared—I will not shrink from inflicting any pain essential to the repression of crime, however great that pain may be; but I must ever oppose, to the utmost of my feeble power, the fallacious doctrine which, setting at nought the lessons of all history, would have us expect from mere pain, consequences which will never follow until man has ceased to be the creature which God has made him.

SEQUEL.

CAPTAIN MACONCHIE entitles his plan the 'Mark System,' and describes it as follows :—

'The mark system proposes :—1. That instead of sentences for a time fixed being passed on criminals, they be required to earn, in a penal condition, a proportion of marks corresponding to their several offences. 2. That these marks be used to stimulate and restrain them, precisely as money is used to stimulate and restrain free people in ordinary life. 3. That a reasonable number be thus credited to them daily for work performed, or day labour duly and punctually rendered,—a fair charge be made in them for provisions and other supplies furnished,—and moderate fines be imposed in them for misconduct exhibited ; the clear balance, after all deductions thus made, alone counting towards liberation. And 4, That when men under this system are associated in numbers together, they be required to distribute themselves into small parties (say) of six, with common interests, each man being thus made to labour and refrain for others as well as for himself, and exertion and good conduct being rendered popular, and indolence and misconduct unpopular, in the community, by each example of them affecting the fortunes of several together.

'The benefits that would be gained by this plan are, that while criminals subjected to it would be still prisoners, still in confinement, giving their labour gratuitously to the public, and kept under strict inspection, they would yet be under the same influences which in ordinary life make men kindly, industrious, prudent, and otherwise well conducted. With religious and other instruction carefully superadded, they would thus much more certainly have their better qualities called out, and their evil tendencies overcome, than when rigorously coerced, disgracefully punished, reduced to a condition resembling the deteriorating one of slavery, and required only to exhibit the slavish virtues of submission and obedience ; and they could also be much more beneficially employed. But, on the other hand, various objections have been suggested to the system, which seem, however, all to admit of easy reply.

'1. It has been said that in operation it would prove uncer-

tain,—time being an exact measure of infliction, but labour not. On the contrary, however, few more uncertain measures of suffering can be devised than time; and it presses uniformly most heavily on the best men. By the young, idle, thoughtless, single, reckless, profligate, the great bulk of criminals, a loss of time is little felt; while to the thoughtful, married men who have fallen, it may be once only, under strong temptation, but are anxious to recover themselves, its forfeiture is often utter ruin. To the first a task-sentence would thus be more formidable than is a time-sentence, though in the end, by overcoming their weaknesses, it would prove equally a great benefit; while to the last it would be immediately felt as a great boon.

2. It has been alleged, also, that this system would be unequal, as by making labour the only means of recovery, the strong would have an undue advantage over the weak; but already, p. 3, I have sufficiently explained the provision made on this head.

3. It has also been accused of being too gentle to deal adequately with the desperate men who are often prisoners; but if this prove so on trial there is nothing to prevent the (supposed) more powerful means now in use from being brought in to supplement it. If the strongest feelings of the human mind, the desire to regain liberty, to stand well with friends and companions, to press forward in a race common to all around, are really found ineffectual as stimulants and restraints, then gyves, stripes, dark cells, and bread and water, may all be added; but at least let higher and nobler motives have the previous essay.

4. It has been also said, that the system is not in itself sufficiently severe;—that it would convert our penal settlements into mere fields of industrial exertion, not of suffering, and that it would thus tend to encourage crime, rather than deter from it. But is this latter conclusion so certain? It proceeds in itself on the error already noticed, that the sole object of punishment is to *deter* from crime, instead of generally to *prevent* it; but even on this low principle will the example of *necessary* industry and submission be more welcome to the criminally-minded, than that of *uncertain* suffering, perhaps to be evaded, or, if endured, to be met with manly fortitude amid the applause of admiring companions? I am convinced of the contrary.

5. Again, it has been objected to the system, that its proposal to give prisoners a discretion

as to their diet, would place them under constant temptation to exceed, and thus nourish rather than counteract, habits of self-indulgence. But first this is a mere detail, the amount of discretion given being susceptible of any degree of limitation that may be deemed desirable; and next, unless a field of self-denial is afforded, how can the habit of it be trained? If the plan would indeed nourish indulgence, no one would oppose it more earnestly than myself; but I am confident that, on the contrary, it would above everything prepare men to resist the familiar temptations that must beset them on discharge, and which now habitually overwhelm prisoners, as they do sailors on first landing from a sea voyage. And lastly, it has been imputed to the system, that it seeks to work only by Hope to the exclusion of wholesome Fear; but in fact, as far as regards moral recovery, it places but little reliance on either principle, and desires to work by *reason* and *certainly* alone. Hope and Fear are good occasional impulses; but as permanent, or even predominant influences, they are most defective. They involve necessarily an idea of uncertainty; and their activity fluctuates even in the most consistent, according to a thousand circumstances of constitution, health, or incidental spirits. They also involve an idea of dependence on the will, or it may be the caprice, of another, which is fatal to the recovery of self-respect, and leads even directly to further abasement. To be reformed, prisoners should have conditional rights, not merely claims to uncertain favour; thus only will their manlier faculties be called out. The law should say to them, 'A specific task is imposed as a penalty on your offences; perform this, and you shall go free, as other debtors do when they have paid their creditors; but until you have done so you will be indefinitely detained.' The principle is just that of Fine, with Imprisonment till it is paid, which works well in other cases. It gains the *will* of the culprit to pay the forfeit, while it deters both himself and others from committing again a like offence. And everything would be gained in dealing with prisoners were their will thus won over. Under the influence of time-sentences it is now active for evil; under task-sentences it would be drawn to good.

'The best code is that which operates on the will of those subjected to it, which, while it speaks with authority, still

recognises self-government as the primary right and duty of a rational being, and which thus cherishes in the individual, *be his condition what it may, a just self-respect.*' These words are, in the main, Channing's, and are slightly modified from the motto prefixed to an ingenious work on Prison Discipline by Mr. Jevons, of Liverpool, which I have only lately seen, and from much of which I venture to dissent, but which has the incontestable merit of having applied them to this subject as far back as 1834. The whole principle on which convict management may really be improved seems to me embodied in them.*

TESTIMONIAL TO CAPTAIN MACONOCHIE.

From the 'Birmingham Journal,' October 25, 1851.

'REFORMATORY PUNISHMENTS.

'PRESENTATION TO CAPTAIN MACONOCHIE.

'On Wednesday evening, a meeting was held in the committee-room of the Town-Hall, for the purpose of presenting a testimonial to Captain Maconochie upon his leaving Birmingham, to mark their respect for his character, and to express their sympathy with the humane and benevolent views which had led him to labour assiduously in carrying out a reformatory system in the management of prisons. There was a good attendance, and many ladies were present.

'William Chance, Esq., took the chair; and there were also in the room M. D. Hill, Esq., Recorder; Messrs. Joseph Sturge, George Edmonds, S. Thornton, James Turner, W. H. Tyndall, S. Haines, H. Morgan, W. R. Lloyd, W. Morgan, Alderman Hawkes, Rev. Mr. Showell, &c.

'The Chairman, in opening the proceedings, observed that they had a pleasing duty to perform that evening, by presenting a tribute of their respect and esteem to a gallant gentleman then present. As some present might not have read the statement at the head of the subscription list, he would read it for prison

* *Remarks on a Report on Secondary Punishment.* By Captain Maconochie, R.N., K.H.

their information. It was to this effect :—‘The undersigned propose to present a purse to Captain Maconochie, R.N., upon his leaving Birmingham, as a testimony of respect for his character, and to express their sympathy with those humane and benevolent views which had induced him to labour assiduously for the purpose of carrying out a reformatory system in the management of prisons. But at the same time they express no opinion as to the best mode of giving effect to such views.’ Now they would perceive that this tribute of respect was given by the private friends of Captain Maconochie from their esteem for his character, aided by other gentlemen who sympathised with him in his humane and benevolent views, quite apart from the circumstances regarding the prison which had recently transpired in this borough. And he thought it necessary to state that the proceedings must be confined to the simple and definite objects for which the meeting had been convened. Mr. Chance concluded by indicating the order of the business.

‘The Recorder then presented an address to Captain Maconochie on behalf of the subscribers, explaining the grounds on which they had acted. It was impossible to contemplate, he said, the multitude of offences against the laws of God and man which they found springing up on all sides, without a deep conviction that the means hitherto relied on for the repression of crime, were lamentably inadequate to the end. Severity had been tried and it had failed. It was hoped that a more lenient application of punishment would, by overcoming the reluctance of the injured party to prosecute, and of juries to convict, make punishment more certain ; and thus operate more surely to deter malefactors from pursuing their evil courses, than was found to be effected by a higher penalty, from which the criminal (calculating on the humane feelings of society,) expected to escape. This hope had failed in its turn. Hence the numbers of dangerous men who, having endured and braved the penalty of the law, were thrown back amongst us hardened in heart and deep sunk in depravity. Learning, then, by history and experience, that all methods which proposed to repress crime simply by an application of the deterrent principle, had not answered the hopes of the lawgivers who had framed their legislation on this footing, they had watched with great interest the advance of

public opinion in another direction, namely, that which points to the reformation of offenders through the instrumentality of a well-devised discipline ; by which our gaols may cease to be schools of crime, as they too frequently are, in spite of many admitted improvements, and may become worthy to be called hospitals for the cure of moral disease. On the possibility of the reform of prisoners in any large proportion of the whole body, there was much difference of opinion ; but surely it must be seen that we had reasonable ground for hope, arising out of the many successful experiments, made in various parts of the world, by philanthropists acting on different methods, and having nothing in common save Christian benevolence and a strong belief that few were in a state so hopeless as to be insensible to the zealous and persevering efforts of kindness under the guidance of a sound discretion. The term kindness, however, conveyed to so many minds the notion of indulgence, that the subscribers thought it right to guard themselves against being supposed the advocates of lax discipline ; or of any treatment of the criminal which had not public good for its first object, and which would not discard all benefit to him inconsistent with that higher purpose. They trusted, however, that both aims may be pursued without any conflict between them ; because in the course of a training from evil to good, the culprit-patient must of necessity undergo a most painful struggle with all his former habits. Not only must his heart be changed, but he must acquire the power of controlling his passions and appetites ; which will remain to torment him long after his aspirations are towards that which is good. They believed, therefore, that as regarded the immediate gratification of the criminal, there was no dungeon, however loathsome, in which he was permitted to remain without moral control, which he would not (for a time at least) prefer to the sufferings inflicted by kindness itself with a view to the permanent good of its object.

‘ But however opinion might vary as to the treatment of adults, on that of juvenile offenders all were unanimous. All felt that for the sins of the child, some one beyond the child itself was answerable. They felt that society could not be held innocent while the crimes of juvenile offenders were to be traced to ignorance and evil training ; and that so long as the

was the only school of the destitute infant, they were under an awful responsibility to conduct that school in such manner as to undo the wrong which had been inflicted upon him; by endowing him (though late) with the best gift in their power—education. Not that they limited the term education to the imparting of knowledge; nor to knowledge with the addition of religious and moral precepts. The most important characteristic of education must be sought for in the inspired volume; ‘Train up a child in the way he should go, and when he is old he will not depart from it.’ Let them then give him *training*, if not before imprisonment (as reason would seem to dictate), at least when he was thrust on their notice as a criminal. ‘I have now,’ said the Recorder, addressing Captain Maconochie, ‘laid before the meeting and yourself our views respecting the great undertaking to which you have devoted so many years of your life, and in the prosecution of which you have made many sacrifices—views of which we may say—(though not forgetting the services of other labourers in the vineyard)—you stand forward as the representative. We desire it, then, to be understood that we sympathise in your labours. We feel that by your writings, and by the experiments which you have instituted, the science of prison discipline has been much advanced. With regard, however, to the means by which the principles adverted to shall be most happily carried into operation, we say nothing. Years probably must elapse, and many trials must yet be made before a perfect system can be devised; but we feel assured that no future explorer will act wisely, who does not make himself acquainted with the charts which you have laid down before he sails on his voyage of discovery. The attendance at this meeting of so large a body of the inhabitants, gives proof that Birmingham is deeply impressed with the duty of maintaining the onward progress of reformatory punishment; and has no intention of making a retrograde movement in her march. In so saying, I believe, too, I speak the sense, not only of those who concur with us in the particular object which has assembled us together, but of all those whose absence we regret.

I have now, sir, to ask your acceptance of this purse; and that you will take with it our sincere wishes for your health and prosperity; knowing how usefully those blessings will be employed in furtherance of the cause which you have at heart.’

The Recorder concluded amidst applause, by presenting Captain Maconochie with a purse containing 250*l.*

‘ Captain Maconochie, who was received with cheers, said he felt, from the fulness of his heart, extreme difficulty in acknowledging their kind address to him, with its accompanying flattering donation. If he could conceive that they were tendered to him personally, he should feel so unworthy of them that he should be inclined to disclaim and even reject them. He did not think they were so presented, but rather that they were addressed to him as the tried and consistent advocate of opinions on punishment, which, waiving details, found an echo in their own hearts. The gallant Captain proceeded to point out the necessity for earnest attention being given to this subject, in consequence of the almost total abolition of capital punishment, and the declared unwillingness of the colonies to receive transports. It was impossible to deal with this mass of criminality by force. No; they should rather earnestly endeavour to reform them while yet in the earlier stages of their progress in crime, so that fewer might become matured in it, and thus fewer, and progressively fewer still, as the methods of reforming became perfected, might press on the resources of Government for eventual removal. With regard to the means, he might be permitted to say that if they desired to succeed—not for the sake of a cold abstraction called society, but for the sake of each individual criminal himself—they must bring a missionary spirit into their prisons: they must make their organization industrial and monastic, not military. Everything within them should be made, as it were, to breathe the aspiration after reform. And whom they thus chastened they must also love. He had had a long experience in the management of prisoners, and few had had a greater degree of influence over them in even very difficult circumstances; but his only secret had been the interest which he had taken in themselves individually: it had created in them a reciprocal interest in his proceedings, and they had proceeded harmoniously to a common end. After a few similar observations, Captain Maconochie gratefully and respectfully bade the meeting farewell. He should never forget their present kindness. It had been at once great and opportune. They had been his friends when he wanted them, and not merely his friends, but the friends of the noblest missionary

cause that could be conceived. To raise the fallen—to rescue the lost—a higher and more interesting enterprise could not be devised. And the voice that here bade it God-speed might kindle an interest in it through the length and breadth of the land. Captain Maconochie concluded, amidst applause, by again bidding them farewell.

‘The Recorder then moved a vote of thanks to their most worthy and excellent friend, Mr. Chance, not only for presiding on that occasion, but for his warm zeal in suggesting the testimonial they had presented, and as being the chief instrument of bringing it to a successful termination by his personal exertions and great liberality.

‘Mr. Joseph Sturge, in seconding the motion, also paid a warm compliment to Mr. Chance, and took the opportunity of saying, that after having carefully looked at the subject of criminal jurisprudence, he had long come to the conclusion that Christian principle and sound policy would dictate that there were only two objects to be attained by punishment, namely, the security of society and the reformation of the offender. Retribution hardened the criminal—did not reform him. He alluded to the effects of kindness, as illustrated in the exertions of the late Elizabeth Fry, expressed his pleasure at seeing so many ladies present, and felt convinced that much of the success which had attended Captain Maconochie’s exertions was due to the sympathy and assistance of the dearest partner of his life. He also alluded to what had been done by kindness in the prisons of America, some of which he had personally visited; and gave an interesting sketch of a reformatory institution for juvenile offenders at Hamburg, which he had visited last year; concluding by expressing his belief that although Captain Maconochie’s exertions here would for the future be lost to them, yet that their effects would long remain apparent.

‘Mr. James Turner also paid a high compliment to Captain Maconochie, and expressed his belief that his principles, if carried out, would have prospered.

‘Mr. W. R. Lloyd said that he had been conversing with a young man that morning who had lately terminated a six months’ imprisonment in the gaol. He had received a good education, but had been corrupted by bad companions, and had incurred the penalty of crime. He stated that he considered

as a blessing the impression that had been made on his mind by the benevolent influence of the late governor, and the advice of the chaplain. He felt he was a reformed character, and had begun a new career. The general opinion that prevailed of the strict justice and consideration of Captain Maconochie produced in his mind, and, he believed, that of other persons, a respect for the authorities of the gaol, and a real desire to conform to the laws; and he regretted that this sort of influence was, unhappily, not felt towards other persons in authority, in consequence of a different mode of treatment.

‘The motion having been passed,

‘The Chairman acknowledged the compliment, attributing much of the success of their endeavours to express their sense of Captain Maconochie’s exertions to Mr. Sturge; and concluded by wishing the gallant Captain and his family every possible success.

‘The proceedings then terminated.’

Mr. Chance, who is since dead, was one of the principal inhabitants of Birmingham; the head of the firm of Glassmakers who supplied the glass for the Crystal Palace in Hyde Park. His services, as a magistrate of the borough and a leader in the public business of the town, will be long remembered. He was the ardent friend of education; and one of the first, if not the very first, employer of that neighbourhood to provide schools for the children of his working-people and his poorer neighbours; not, however, confining his benefactions to the district in which he was particularly interested. His sons and relatives who have succeeded him carry on their vast concerns in the same spirit of enlightened benevolence.

MR. CHESTERTON ON CAPTAIN MACONOCHIE.

‘Numerous reflections upon the government of convicts have been made by Captain Maconochie, R.N., gathered from his experience as governor of the penal settlement of Norfolk Island. He has, in various ways, submitted his views upon that subject to the public; but neither his antecedents at Norfolk Island, nor his subsequent career at the New Prison, Birming-

ham, have invested his opinions with a very high authority. One point, however, which he has suggested is most worthy of consideration, viz., the substitution of 'marks' for a fixed term of sentence. It is proposed that these marks should be made redeemable by conduct or industry, and thus the convict's fate would, to a great extent, repose in his own keeping.*

Mr. Chesterton, who himself has suffered the pain inflicted by hasty censure, and who knows the bitterness of the feeling, should have made himself acquainted with the facts before he allowed himself to sneer at what he calls Captain Maconochie's 'antecedents.' It is quite true that his services at Birmingham were disapproved by a majority of the magistrates. It is equally true that they were highly valued by a minority of that body; and that the general feeling of the town was in his favour.

With regard to Norfolk Island, it is undeniable, that under the difficult circumstances in which he was placed, the Captain's administration was highly successful. His authority was subordinate to that of the Governor of New South Wales, by whom he considered himself, when he proceeded to the Island, empowered to hold out hopes to the convicts that his 'mark system' would be carried into operation. Thus hopes, afterwards disappointed, were proffered to the men that they would be able to regain their liberty by industry and good conduct. Captain Maconochie had to bear the shock which the disappointment produced in the minds of the prisoners; yet, in spite of all adverse influences, he succeeded in ameliorating their conduct to a very high degree. The reader who desires to learn the details of his administration may consult the evidence before the Lords' Committee on the Execution of the Criminal Law, 1847.

The following extract from a letter from the Chaplain of Norfolk Island, during the residence of Captain Maconochie in that settlement, will show the feeling, towards himself and his plan, of a gentleman possessing no slight experience in the treatment of convicts:—

* *Revelations of Prison Life*, p. 54. By George Laval Chesterton. Hurst and Blackett. London, 1856.

Extract from a Letter of the Rev. T. B. Naylor, formerly Chaplain of Norfolk Island, now Incumbent of Carcow, New South Wales, dated 29th June, 1846.

‘ Enough of myself. I turn rather to the subject which, I am rejoiced to find, has still so untiring a champion as yourself to fight its way into the estimation it deserves, and (shall I not add ?) which it must, sooner or later, obtain. I have devoured your book. Its statements are undoubted. The convict is a slave—a more absolutely pitiable slave than ever pounded sugar in Barbadoes. His emancipation, his reformation, his restoration (if God so bless the effort), is a debt the nation is as solemnly bound to pay as ever she was to count down, for the other, twenty millions. May she be as honestly, as nobly willing—not to make such a sacrifice, but in truth to save money; not to inflict an apprenticeship, but to confer the means of purchasing his own freedom on the convict,—and all this, not by advancing money, but deriving it from the very machinery she employs for the accomplishment of this great good. I am heartily and fully persuaded that, under God’s blessing, the system of ‘marks,’ or rather more generally the self-reformatory process, is above all other means the best, if not the only means of uniting the conflicting interests of the criminal and justice. My most devout desire is to see it have a fair trial; for I am (after having viewed the subject in every possible light) most thoroughly convinced it would succeed,—that it would be inexpensive, easily worked,—and incalculably beneficial in its results. ‘How glad should I have been,’ has many a poor fellow, desirous of recovering his station as a free man, said to me,—‘how glad should I have been if they had laid out my ten years’ work before me when I commenced my sentence,—and told me to get it done by hard work and good conduct as soon as I could! What a different man I should have been!’ But never let the first attempt again be made, if it be possible to prevent it, upon the men who have received the almost irreparable injury which the past has inflicted on them. I do not mean to say that the process is not equally applicable to them; but I have seen how deeply branded upon their diseased minds is the fact that they are slaves, and how almost impossible it is to remove the suspicion of some fresh manœuvre on the part of the Government when any effort is

made. Words cannot express the demoralization occasioned by past mismanagement. My anxiety is, that the system should have one fair field first,—that its truthfulness may be incontrovertibly proved. If we both have a distinct conviction of the deceitfulness of man's heart, and the necessity of God's blessing to give efficacy to all efforts, as I fully believe we have, I think we are, in all essential points, entirely agreed in this deeply interesting matter. May God Almighty direct and prosper you, my dear friend, and long spare you to give energy to your generous and holy plans. . . .

(Signed)

' T. BEAGLY NAYLOR.

' Carcow, New South Wales.'

The following letter, from the late Mr. Joseph Hume, to Captain Maconochie, will show that his opinion, as to the merits of the latter, was unchanged by what had occurred at Birmingham :—

' Burnley Hall, 31st October, 1853.

' MY DEAR SIR,—I have read with attention M. D. Hill's Charge to the Grand Jury at Birmingham, on the 19th inst., as reported in *Aris's Gazette*.

' It is in continuation of his two former Charges, as they have been printed, and I hope he will publish the last Charge with the quotations from his brother's book on Crime.

' I agree entirely with him, that the experience of *deterrents*, as a means of reformation of criminals in gaols, ought to suggest the opposite of *rewards*, so granted, along with punishment, as to give hopes of liberty by the predominance of good conduct and labour.

' When I expressed to you, in my last letter, that I had no hopes of reformation of criminals in gaols, it was in the understanding that *deterrents* alone were used, as they have been generally; although I hope not in all gaols as in that of Birmingham.

' If you have copies of any of my letters to Sir George Grey, and other Secretaries of the Home Department, on that subject, when I recommended the ' Mark System,' I think you will find that I *made the exception of your mode of rewards* as the means likely to be the best of exciting hope of liberty by virtuous and continued exertions.

‘ I have always desired to see your plan carried out on a large scale, and I wanted you to be employed at one of the largest receptacles of criminals.

‘ I go further than Mr. Hill does. He alludes to the visiting magistrates and to the gaols being under the direction of the unpaid magistrates, but he does not say, as I have done, ‘ that the Secretary of State ought to have the appointment of all governors of gaols, and the issuing of all prison rules, and that these rules should be applicable to every gaol, and the same punishment for their infraction in every gaol.’

‘ I have no objection to the magistrates visiting as often, and examining as strictly as possible, every department in the gaol, but not to interfere with the governor. The duty of the visiting magistrates should be to report to the Secretary of State, giving a copy to the governor. I hope yet to see these alterations effected in our prisons !

‘ I dread the Ticket-of-Leave without the ‘ Mark System’ being fairly tried and in operation. If you see anything more on the subject worth perusal let me see it.

‘ I remain, &c.,

(Signed)

‘ JOSEPH HUME.

‘ Captain Maconochie, London.’

Mr. Hilyard, the successor of Lieutenant Austin, amply justified the choice of the magistrates. He proved a zealous, vigilant, and at the same time a most humane governor ; and, in addition to the duties of his office, exerted himself to shelter discharged prisoners, old and young, from the destitution into which they are too often thrust forth when the term of their imprisonment expires.

The mistaken parsimony of the Town Council, on whom it devolves to determine the amount of the Governor’s salary, has enabled the magistrates of Kent (December, 1856) to deprive Birmingham of Mr. Hilyard, by offering him a remuneration commensurate with his services.

Mr. Hilyard, in conjunction with the Rev. John Burt, Chaplain to the Gaol, Mr. Rogers, the Surgeon, and Miss Martha Corfield, the Matron, originated, in April, 1856, our Prisoners’ Aid Society, which was immediately joined by Mr.

Stephens, Chief Superintendent of Police, and Inspector Glossop, who stands next in command in that force.

The difficulty of assigning its proper value to a true principle is often much greater than that of disproving a false one.

That deterrents, under given circumstances, have great force cannot be doubted. To a person holding a respectable station in society, whether of high or low degree in the social scale, the mere suspicion of crime is terrible. It is not the punishment threatened by the law which presses upon his mind—that may never come—his good name is no more—the averted eye he must endure in place of the hearty greeting which met him yesterday—the consciousness that he has lost caste and is no longer in the judgment of the world a *true man*—these are the reflections under which he writhes in agony. But having passed that Rubicon, experience abundantly shows that when the sole deterrent left to him is the fear of punishment, its force is weakened to an extent hardly credible to an inquirer not yet conversant with the class whose state of mind he will have to consider.

On all questions of degree, opinions are sure to vary. I have had the misfortune to differ with a friend for whose views I entertain the most sincere respect. As the observations which I have addressed to him in the following letter have been thought to throw some light on the question in controversy, I subjoin it:—

Letter to C. B. Adderley, Esq., M.P.

‘Heath House, Stapleton, February 20th, 1856.

‘DEAR SIR,—I have read your pamphlet with great interest, and in many of your remarks, perhaps in a majority of them, considered as insulated propositions, I entirely concur.* Thus the field of controversy is materially abridged, and the points of difference may, I trust, be disposed of without my trespassing too much on your patience.

‘It may wear the appearance of pedantry or formalism to begin by reminding you that the ultimate object of all punish-

* *Punishment is not Education.* Parker and Son, West Strand. 1855.

ment is the diminution of crime to the lowest attainable point ; but experience has convinced me that such a precaution is absolutely necessary. This definition is the compass by which the argument must ever be guided, and to which the eye of the pilot must perpetually recur. But, unfortunately, the proposition is so obviously true, that the mind admits it and forgets it almost in the same instant ; although, if steadily kept in remembrance, nine-tenths of the differences which perplex the controversy would adjust themselves.

‘ You maintain that we must rely on the deterrent principle ; you believe that punishments must be ‘ short and sharp ;’ and you are of opinion that if the pain were *exhibited*, as the apothecaries term it, in homœopathic doses, with repetitions *quantum suff.*, this remedy, from which the world has expected so much and reaped so little, might yet accomplish the desired object without the aid of long training, which implies a long detention. The deterrent principle captivates the mind upon its mere enunciation ; consequently I am not surprised that it should have laid such fast hold on public favour in all ages. The maxim, *metus ad omnes, pœna ad paucos*, commends itself as a most specious offer. It proposes by acting on a few to influence all ; confining acute suffering to those few, and only producing on the multitude a wholesome dread of incurring a like penalty. Such an offer at once engages our kindly feelings, and falls in with our admiration of powerful effects produced by slight causes. That every stroke on the shoulders of a thief should scare thousands of outstretched fingers from diving into honest men’s pockets, and save the owners of those fingers from pain and disgrace, would be a state of things very agreeable to contemplate, if we could forget that it is for the most part only a creation of the fancy. Deterrents have a certain degree of power beyond all doubt ; and that the power, such as it exists, is of the kind indicated by the maxim is also freely admitted. But each expedient which that maxim suggests has been tried in every possible form ; and the state of crime in all ages and in all countries abundantly supports me in asserting that deterrents, however used, whether in large or small doses, whether at once, or with repetitions extended over a long period, are but weak agents, and cannot be relied upon for an efficacious repression of crime.

‘ Perhaps a succinct examination of the causes which produce this debility will disclose reasons why we must not hope to accomplish very much in our attempts to increase their efficiency. It is obvious that if every offence drew down inevitable punishment, and if the penalty followed quickly upon its commission, the deterrent principle would be vindicated by perfect success. Crime, although it can never be extinguished, would, at least, be so much reduced, as to be no longer a cause of public anxiety. Offences would be infrequent, and punishments might be slight. If, for instance, a thief knew that his plunder would to a certainty be taken from him in every instance, the forfeiture of his time and labour would be almost of itself sufficient punishment; sufficient to prevent his repeating his offence, and sufficient to deter others from embarking in so futile an enterprise as theft would then become. But, alas! how are we to ensure certainty of detection? Have we made any near approach to it? Is not the existence of a professional class of thieves conclusive evidence that the proportion of detections to offences must be small indeed? Bearing in mind the low price which the thief obtains for his plunder, as compared with its value to the rightful owner, it will be evident that every person who maintains himself by theft must daily exercise his calling; and as his term of impunity often extends over many years, we can have no doubt that he looks upon detection as a tradesman looks upon a bad debt, namely, as a misfortune incident to his occupation. The lesson which he draws from it is also identical with that learnt by the tradesman, namely, to exercise greater watchfulness for the future. Now, this being the well-known state of the facts, why are we to be surprised at the existing pressure of crime upon society? And why are we, so long as we build our faith on deterrents, to indulge in hopes that the future will differ from the past?

‘ In disregarding the chances against him, and in fixing his attention on those which are in his favour, especially when the latter outnumber the former, does not the thief act in conformity with a law of the mind influencing all around him? Nay, even when the chances are against them, a very large class of the community—such are the gambling propensities of mankind—are willing to incur enormous risks. Lotteries flourish in all countries in which they are not prohibited; and yet the adventurer

knows full well that if he were to buy all the tickets, and consequently secure all the prizes, he would nevertheless be a great loser. When Beccaria and his followers magnified the value of certainty as contrasted with severity, they did well. But the fatal defect in their argument is their assumption, that certainty is attainable; shutting their eyes as they did, and still do, to the incontrovertible fact, that while in no age or country has it yet been secured, every addition to our numbers and our wealth, and every step of our progress in the arts, create new temptations to crime, and new facilities for its commission. That they also furnish additional means of repression is not denied; but on the whole, our approaches towards certainty of detection, if, indeed, we are moving towards that point, are too slow to give any reasonable hope that it will be attained, even in the most distant future; while it is quite clear that for all present purposes it must be put entirely out of calculation. But certainty, even if attainable, would be insufficient unless accompanied by *proximity*. Indeed, certainty is attained in one sense. Every thief is conscious that sooner or later he must come under the grasp of the law; and that although he will be mercifully dealt with at first, yet in the end his punishment will be severe. Still, he is not prevented from running his course of guilt. And here, again, he follows the example of his betters. The drunkard is painfully conscious that destruction is the inevitable consequence of his vice, and yet he cannot refrain from his bottle.

‘ This habit of disregarding consequences, not immediate, was a few years ago brought to my mind with great force. I happened to visit a Cornish tin-mine, and inspected the various operations performed upon the ore. Some of these were carried on in the open air with the spade, and were, like agricultural employment, which they much resembled, very favourable to health. Other operations were conducted in buildings furnished with stoves burning fiercely. These emitted fumes which I found it difficult to endure, even for the few moments of my stay. On inquiry, I discovered that the painful sensations which I had experienced arose from the presence of arsenic, disengaged from the ore by the process going forward in the stoves. The workmen exposed to these deleterious exhalations are, as might be expected, very short-lived, few attaining the age

of forty. On comparing the wages earned by the labourers at the stoves with those engaged in the open air, I found that the difference is only half-a-crown per week. For this miserable bribe does the victim incur the penalty of a certain and early death !

‘ Let me relieve for a moment the dryness of this discussion with an extract from an article by Sir Walter Scott, in the *Quarterly Review*, on Sir Humphry Davy’s *Salmonia* :—

“ We happen to recollect an anecdote, indicative of the passionate hold which the sport of angling maintains over the minds of some individuals, with whatever risk it may be accompanied. It is now a great many years since we met, in fishing quarters, the very pleasing and accomplished gentleman, then engaged in his medical studies, from whom we heard the story.

“ In a former fishing excursion, such as that in which he was engaged at the time, our friend had observed a follower of the same sport holding his course down the very midst of the small river ; and the angler in question was a ‘ noticeable man.’ He was of uncommon stature—a large and portly figure, brandishing with both hands a rod which commanded the stream on either side,—while being immersed to the waist, his ‘ fair round belly ’ seemed to project like a dark rock when in the shallow water, and in the deep current to rest and float on the surface of the waters like the hull of some rich argosy.

“ Our friend could not help looking back more than once, at this singular figure ; until he suddenly observed the angler quit the stream, get out upon the bank, and hasten towards him with shouts, which seemed a signal of distress. On his closer approach, our medical friend observed that the countenance of the fisherman, naturally bluff and jolly, and not unfitted to correspond with the height of his stature and importance of his paunch, seemed disordered and convulsed with pain. He begged earnestly to know if our acquaintance had in his basket a flask with spirits of any kind, complaining, at the same time, of an attack of cramp in the stomach, which gave him intolerable agony. This was supplied with all the benevolence which should subsist between brothers of the angle, according to the instructions of their patriarch, Izaak Walton. When the tall fisherman had experienced the relief which the cordial drop afforded, our informer told him his profession, and inquired whether these

attacks were frequent, and whether they were constitutional. 'Very frequent,' answered the lusty edition of *Piscator*, 'and, I am afraid, rooted in my system.' 'In that case, sir,' replied my friend, 'allow me to tell you that fishing, or at least wading while you fish, is the most dangerous amusement you can select for yourself.' 'I know it,' said the poor patient, dejectedly. 'Assure yourself,' pursued the physician, 'that your very life depends upon your forbearing to pursue your sport in the manner you do.' The intelligence seemed nothing new to our forlorn angler. 'I know it, sir,' he said; 'I have been told so by the best of doctors; but,' he added, with an air of stoical yet rueful resignation, that might have graced a man who sacrificed life to some mighty duty, 'Heaven's will be done! I cannot live without fishing, and without wading I can never catch a fin.' So saying, the giant thanked his adviser, went back to the spot where he had left his rod, and was seen a few minutes afterwards bowled-deep in the stream.

'Our friend had the curiosity to inquire after the name and condition of this devoted angler to whom life was nothing without wading waist deep after trouts. In the course of the year he saw his death announced by the newspapers. He was found dead on the banks of his favourite stream.'—*Scott's Works*, 1835, vol. xx.

'Here the prescription of 'short and sharp' had a fair trial, the doses being repeated until death, an event which interferes with so much medical treatment of the most brilliant promise. In this case the deterrent principle had an advantage which you cannot command. Not only was the immediate pain intolerable, but it was known by the offender to be a solemn warning that unless he altered his course of life, capital punishment would quickly terminate his career. It will not do to say that this is an exceptional case. The criminal class is itself an exception, and is in the main composed of individuals who, from want of good training, are not amenable to the restraints which are found sufficient to keep the bulk of society within the boundaries prescribed by the law. Again, it would be conceding too much to admit that the instances to which I have called your attention *are* exceptions. As in the case of the tinnerns, large bodies of working men may be found, who, with their eyes open, encounter, not the risk, but the certainty, of early death.

Take the trade of needle-making, as it existed some years ago at Redditch, within a few miles of your own Seat. The workman knew by unerring symptoms when his short life was drawing to its close; and if his friends ventured upon soothing him with hopes of recovery, he resented all such delusions as a cruel mockery. Yielding himself to his fate as to an evil foreseen and not to be avoided. The gilders of Birmingham were formerly under the same irrevocable sentence, and many other artisans were subject to a like doom; nor is it immaterial to remark that when any invention has been made, having for its object to relieve the men from danger, it has frequently been very ill received by them, because it imposed some small trouble or inconvenience on the workman, or led him to fear that his danger being reduced, his wages would undergo a similar change; so inexorable is the tyranny of the present over the highest interests of the future!

‘It must not be objected in favour of deterrents that criminals will undergo the sufferings of shame in addition to corporal or pecuniary penalties. Doubtless, by expulsion from the honest part of society, such as were ever members of that order suffer much; but that suffering comes too late. They have calculated on escaping detection, and have been deceived, or as they call it, ‘unfortunate;’ and once enrolled in the criminal class, their sense of shame becomes inverted. Disgrace then attaches, not to dishonesty, but to want of skill in their avocation, and to repentance under suffering; and thus it is that the same emotion which at one period presents obstacles to their fall, afterwards becomes a serious impediment to their restoration.

‘The absence, then, either of certainty or proximity, will so far weaken deterrent action as abundantly to account for its inefficiency; but in the case of criminals we have, and I fear must ever have, the two causes of uncertainty and delay operating in combination, and, consequently, with multiplied force; if so, is it not hopeless to put faith in deterrents?

‘In early times it was natural to suppose that the want of certainty and proximity might be supplied by increasing the severity of punishments. But this expectation was quickly found to be fallacious. More than 2200 years ago this question was set at rest in the minds of the observant and reflective

Greeks. The speech which Thucydides puts into the mouth of Diodotus, in the debate on the revocation of the decree of extermination against the men of Mitylene, shows that the vanity of this expedient was no secret at Athens; and the experience of the world from those times to the present has borne uniform testimony to the same effect.* I need not, however, urge this truth upon you, who freely admit it. I will content myself with observing that the crime of forgery was never so rife as when it was a capital offence, and when the Crown was far more inexorable towards forgers than it now is towards murderers.

‘But to you it appears that the salutary consequences which aggravated severity has failed to produce, will follow upon a milder infliction frequently repeated. Whether pain concentrated or pain distributed strikes more fear into the criminal, is a question which I will not take up your time in discussing, because it appears to me beside the mark. That by either process the mind of the sufferer may be filled with anguish, and his body racked with torture, that he may, in his moments of suffering, deplore his folly in having subjected himself to such appalling visitations, that his resolutions to avoid them for the future may be sincere and as strong as his mental constitution will permit, I make no doubt. But of this I am equally assured, that if you send him forth into the world without habits of industry, and without the power of self-government, to encounter the awful difficulties which stand in the way of every man who has lost caste, and is struggling to recover his position, you embark him on a hopeless enterprise. Not that he is ignorant of the fatal vortex towards which he is irresistibly drawn,—not that he underrates the agony which is in store for him,—but his necessities are instant, and the penalty is at some distance. The contest is between his present and his future self. And with the members of his unhappy class the future self is as certain to be sacrificed as if it were the self of another being.

‘And this brings me to what I must consider the fallacy which has misled you, in common with all the votaries of the deterrent principle. You assume that the deterrent force of a punishment will increase in proportion to the pungency of the

* Book iii. cap. 45.

infliction; and you would be right if you had any means of stereotyping the state of mind in which the criminal finds himself at the moment of suffering. But that is just where all your predecessors have failed, and where you must fail; because the change which you propose, if it were a novelty, which it is not, leaves the defect in the deterrent principle untouched. For the criminal under deterrent action the line, 'Wax to receive and marble to retain,' must be reversed. However deep may be the impression, it quickly wears away.

'Thus then the school of criminal jurists, to which I belong, have not deserted received opinions on light grounds; or sought for new principles until the failure of the old ones for the production of good practical results had been demonstrated by centuries of experiment, varied until the wit of man had exhausted all the possibilities of permutation. What course then remained for choice? None within the scope of my imagination, save two. First, such treatment as incapacitates the criminal from the commission of offences, leaving at the same time his appetites and passions unsubdued, and his desires unchanged; or, secondly, a treatment which has for its object to reform him, by leading him to yearn after good instead of evil, and by so training his habits as that he shall be able to give effect to his new aspirations.

'We are reduced, in short, to *Incapacitation* or to *Reformation*. Both these expedients, it must be admitted, are of very humble pretensions, when contrasted with the ambitious aims of deterrent punishment. Incapacitation limits itself to preventing the criminal from repeating his offence; either for a time, as when imprisonment is employed, or for ever, as by the infliction of death. But as we are in no wise friendly to capital punishment, we would only use incapacitation as furnishing the opportunity for exercising reformatory action on the criminal; or in extreme cases, for withholding from society one who has resisted all endeavours to improve him. But although we administer pain with a reformatory object, yet we incidentally obtain the advantage of whatever deterrent effect belongs to that pain; because it is clear that the patient is deterred, not according to the purpose with which the pain is inflicted, but according to the amount of the pain itself. Now reformation implies a long detention,—a protracted struggle,—and many a

disappointment, before the goal is reached. Indeed, one of the grounds of your objection to reformatory treatment is (if I have not mistaken your meaning), that from its extensive duration, it exceeds all just measure of severity. Let me admit, for the sake of argument, that your censure is just. Surely then, reformatory treatment cannot be objected to as wanting in a copious infusion of the deterrent principle; and, consequently, to compare or contrast reformatory and deterrent punishment must be illogical. For although we find deterrent punishments are too often not reformatory, reformatory punishments must of necessity be deterrent; and thus the latter scheme combines the advantages of both systems.

‘ But I am in hopes you will cease to consider what you term a reformatory education as visiting the criminal with excessive punishment, when you call to mind that, while enduring it, he is not merely expiating an offence, but at the same time receiving an inestimable benefit; for you, I am sure, will not hesitate to admit that reformation is the greatest good to which the criminal can possibly aspire; and that riches, titles, power, or any or all the objects of earthly ambition, ought to be as nothing in his mind in comparison with what we are doing our best to enable him to achieve.

‘ Our first expedient in reformation is, you know, to induce the criminal to labour, until the habit of industry is well formed. Yet although this may be justly called our main expedient, it is far from being our only one; since the habit of industry, without the power of self-government, would be insufficient to preserve the prisoner when at large from falling a prey to temptation. But his industry may be made to supply a fund, which will enable us to train him in the art of self-government. Let all fines for misconduct, either of a positive or a negative description, be paid out of this fund. As he advances in the work of reformation, relax gradually the various restraints which are imposed upon prisoners. At first he will be kept in a state of separation from his fellow-sufferers, and cannot there exercise many of the social duties. Still he may do much towards the acquirement of self-control. Let him have a certain limited command over the produce of his industry, which he may at his own option expend for the purchase of indulgences, or retain to accelerate the moment of liberation.

If he snatch immediate gratification at the expense of increased length of imprisonment, it will be seen at once that his power of self-control is inadequate to protect him from the temptations which he will have to encounter on going back into the world. But when there is good reason to believe that their minds are turned into a right direction, however feeble may be their power of acting on their convictions, let a small class of such prisoners be permitted to associate together. Let the little band be under pecuniary liability for the offences of each, or in other words, let the fines be paid out of a common stock. Thus the prisoner will find himself exposed to new dangers, new temptations, called upon for the fulfilment of new duties, all of infinite importance; and his powers of self-government will be developed to an extent for which solitude furnished no scope. So again, if the little community, by quarrels, by supporting each other in misconduct, or by relaxing in any way the efforts of each member towards reformation, showed that the individuals of which it is composed had been brought out of a state of separation before they were prepared to live together with profit, it should be broken up; and each prisoner must recommence in solitude the labours of self-improvement.

‘By these and similar means, many of which are not mere speculations, but have been reduced to practice, the prisoner might be so gradually released from one restraint after another, as to make the step to perfect liberty a far less change than it now is.* For instance, one stage might be to remove him from a prison, strictly so called, to some building not surrounded by walls; to let him know that he was under no physical restraint, but that if he absconded, he would, upon his apprehension, be brought back and consigned again to the gaol, to recommence the toilsome journey towards freedom. Here is a new temptation to resist, the power of which it is almost impossible for any one who has never endured the tedium of a prison life adequately to conceive. Being some years ago at Florence, I made the acquaintance of Signor Salvagnoli, the head of the

* ‘See Captain Maconochie’s pamphlet, just published, entitled *Prison Discipline*. Harrison, Pall Mall. 1856. See also, *A Visit to the Great Prison at Munich*, by the Rev. C. H. Townsend, in the *Zoist* for January, 1856. Hall, Paternoster-row.’ [Vide Sequel to the Charge of October, 1856.]

Tuscan Bar ; a gentleman who, having been a Minister of State during the revolution of 1848, found himself, when the old order of things was restored, consigned to a fortress, in which he was detained for a period of some months. I took the opportunity of inquiring from him, as I had done from others, whether he found the privation of liberty more or less painful than he had anticipated. He, like others, told me that he found imprisonment irksome to the last degree ; and that when he regained his freedom, he spent his whole time for some days in roaming about, changing his route almost at every moment to assure himself that he was not compelled to observe any prescribed course. '*Juvat ire,*' he repeated to himself again and again, every time striking into a new path.

'To overcome the temptation to wander at large, revisit old scenes and old companions, and more than all, indulge in his old gratifications, would indeed be a great lesson in self-government ; and furnish a most valuable test that the reformation of the prisoner, so far as it had proceeded, was genuine and substantial. The next stage might be employment on public works, at wages below the ordinary standard, but which employment would, after a time, entitle the prisoner to a Ticket of Leave of the very best kind, because it would be a certificate of character.

'I would then place the prisoner under the guardianship of a member of a *Société de Patronage* ; such as France has long possessed, and such as I trust England will not be long without. By the aid of such a society, prisoners who had gone through the ordeal which I have thus indicated, would be placed in reputable employment, and, to a very considerable extent, guarded from the snares which beset the liberated convict. Meanwhile the liability to recommittal would still hang over him, at least for some years ; and must, if duly exercised, operate as a check, not only upon the commission of crime, but upon the formation of habits and associations which lead to crime. The warning now endorsed upon the back of each Ticket of Leave would then become a truth ; and the holder, if found without visible means of subsistence, or associating with persons of bad character, would be held to have fallen into dangerous courses, and would be considered as about to relapse ; and his licence to remain at large would be revoked.

‘The distinction between a good prisoner and a good man is well established in the minds of all who are conversant with the habits of convicts. It is generally referred to hypocrisy. The good prisoner who, upon his release, turns out a bad member of society, is held to have been playing a part; and too often the imputation is well-founded. But it quite as frequently occurs that the relapse of the unhappy individual is caused by his finding himself forced upon assuming the reins of self-government, when his prison training has not only *not* qualified him for the task, but has thrown into disuse whatever power of this kind he may have taken with him into the gaol.

‘It is true all this is education,—education, as I submit, of the very best kind. But I am sure you will not object to the State affording education to the criminal, unless it can be shown that the benefit to the individual is productive of some injury to the community. Now, any such evil could only accrue if this education really weakened the corrective or the deterrent effect of punishment; but if the foregoing arguments are valid, the corrective effect of punishment is largely augmented, or indeed it may be said, altogether created, by this educational training; while, having regard to the vicissitudes of progress and retrogression which the prisoner must necessarily undergo, and which will not only be severe but of long continuance, it can hardly be doubted that their impression on his mind will be greater than that produced by any process of ‘short and sharp;’ as it will also be on the class, on whom whatever he may suffer is likely to have the greatest influence by way of deterrent. Sharp such treatment cannot fail to be; and it will not only be sharp but long.

‘I now address myself to your objections. You appear to have no confidence in the labour test; and instances, you say, have been found in which prisoners, evincing much power of labour while in prison, have abjured all honest industry from the moment of their discharge. Doubtless industry, as I have already said, is not of itself reformation. The habit of labour, however, removes one great difficulty. It endows its possessor with the faculty of self-maintenance, although it cannot be depended upon to prevent relapse if unallied with the faculty of self-government. Thus the high value which we set upon industry, is not merely because it enables the individual honestly

to maintain himself if he be so disposed, but also because those who have the control of his prison life may avail themselves of that industry, as a means by which he may be taught to govern himself. Again, I think this education may be defended on your own principles. Not only do you urge by precept, with all the power derived from your talents and your high position, and also by your munificent example, the duty of educating the young, but you seem disposed to go to the length of denying the right of the State to punish juvenile offenders whom it has not guarded from ruin by proper training. If, however, that notion be well-founded, when does the right of the State to punish a non-educated criminal begin? If it be wrong to punish him in his youth, because the gift of education has been withheld, how does he become responsible by effluxion of time? What has manhood done for him, except to add the chains of habit to those of ignorance? I must confess it seems to me that every reason which can be alleged to show the injustice of punishing the uneducated boy is strengthened in the case of the uneducated man; and I cannot but hail it as a most happy coincidence, that in adopting the best known means to arrive at the true end of punishment—the repression of crime—we do, incidentally, bestow that education at last, which, in the majority of instances, we have neglected to supply at an earlier and more natural stage.

‘ But then you raise an objection which I cannot but honour, although I must not for a moment yield to it. You seem to think there is a want of fair dealing, as between the high and the low, in imposing on the latter a course of training which the former escape. It is a novelty so agreeable, to find the rich and the well-born evince this jealousy of the rights of those below them, that allied as I am by birth, and by many strong prepossessions, with the class of which you are the champion, I cannot but feel some reluctance to combat what I must nevertheless hold to be a fallacy. The rich, you say, are not very likely to commit offences which bring them under the animadversion of the criminal law, although they but too frequently indulge in conduct which cannot be reconciled either with the rules of religion or morality. The consequence which you draw from these undeniable facts is, that we have no right to keep offenders belonging to the humbler classes under a disci-

pline which shall give us security against their repeating their offences, because there is no correlative treatment for the misdoings of the higher classes. But if your argument have a just foundation, it must lead, I submit, to a much more sweeping conclusion than that which you have adopted.

‘The punishment which we propose to administer may be considered in two aspects; first, as turning the offenders from evil to good, which is a benefit, and beyond all doubt a benefit of the highest nature, to the individual; and next, as administering the pain which is necessarily incidental to such a process. Now it is not to pain, *per se*, which you object. *That* you are ready to inflict to as great an amount as is necessary to bring the deterrent principle into full operation. Your objection is pointed against what forms the benefit to the individual; and if the pain, which we cannot help administering, is greater than that which you would inflict, still, even looking solely at the interests of the patient, he purchases, at the price of his additional pain, an inestimable blessing: while your treatment would thrust him from the prison doors smarting under bodily suffering, his angry passions exacerbated, his thirst for guilty pleasures made intense by privation, and all his habits of mind and of body, if changed at all, changed for the worse. Surely, then, if this new right of equality which you have discovered is to be established, it would much more reasonably confer a proletarian exemption from ‘short and sharp,’ than from education; and thus you would have to exempt the lower classes from punishment altogether.

‘The deterrent principle sacrifices the individual to the public; the reformatory principle, though incidentally deterrent, yet repays the individual for his suffering, by bestowing upon him a gift, for which that suffering is well endured. The deterrent principle arms the executioner with the whip, the marking-iron, and the knife. The criminal is flogged, branded, deprived of his ears. The reformatory principle calls in the surgeon, who, although he may cut deeper and inflict far more excruciating torture, has ever the benefit of the patient in view; and subjects him to no pain which is not to purchase for him a greater measure of comfort. Trust me, if you could consult your clients, and if they were cognizant of their true interests, it is against the executioner and not against the surgeon they would

instruct you to remonstrate: the latter they would implore you to retain.

' You express doubts as to the possibility of discovering and applying effective tests of reformation. Unerring tests, I admit, cannot be supplied; but neither can they be found in support of the verdict which has consigned the convict to prison. Moral certainty, according to Beccaria, is only a probability; but one so strong that we are constrained to act upon it.* If you would be satisfied with a probability, as high if not higher than the one upon which the prisoner has been stamped with the brand of conviction, such a probability can be afforded by daily record of facts *pro* and *contra*. The fate of a prisoner ought not to depend on a conclusion formed without precise data, gradually accumulating through a series of months or years. But with those aids to the judgment of the authorities, with his prison life divided into stages of progress—each attainable by good conduct, and each to be forfeited by ill conduct, each relaxing some restraint until the last step into perfect liberty is but a slight modification of the state immediately preceding it—and with a licence to be at large, revocable for a period sufficient to operate as a check upon even incipient bad courses, I see no insuperable difficulty to be overcome; that is to say in a large majority of cases. Some prisoners would never work their way out of prison; but they would be, for the most part, of a temperament to suffer little from the restrictions to which, under a mild and enlightened system like that of Captain Maconochie, they would alone be subjected. There is a class of prisoners, a small one no doubt, yet larger than those unacquainted with criminals might expect to find, who are not wholly unconscious of their incapacity for self-government; and who are happier, or at all events less unhappy, in prison than at large. In prison they behave well, though, knowing their own frailty, they may not exert themselves much to obtain a discharge. Such prisoners

* 'Io parlo di probabilità in materia di delitti, che per meritar pena debbono esser certi. Ma svanirà il paradosso per chi considera, che rigorosamente la certezza morale non è che una probabilità, ma probabilità tale, che è chiamata certezza, perchè ogni uomo di buon senso vi acconsente necessariamente per una consuetudine nata dalla necessità di agire, ed anteriore ad ogni speculazione; la certezza che si richiede per accertare un uomo reo è dunque quella, che determina ogni uomo nelle operazioni più importanti della vita.'—*Dei Delitti e Delle Pene*, § vii.

need not be subjected to a very harsh discipline ; and their lives may be suffered to pass away in a manner best suited, both as regards the State and themselves, to the infirmities of their nature.

‘ There is one suggestion in your remarks in which I heartily concur, although certain difficulties which would attach to its practical operation have hitherto prevented me from submitting it to public consideration. It is the expediency of calling upon the criminal to compensate those whom he has wronged by his offences. The great value of the suggestion consists in its obvious justice, which would reconcile the public to a long detention of convicts with a view to their labour furnishing them with the means of payment. And, having regard to the present state of the public mind on the subject of punishment, it might be desirable often to make the cost to the community and the individual injured, flowing from the convict’s offence, the measure of his punishment. Charge him with the cost of his apprehension, prosecution, and imprisonment, including not only his lodging, food, and clothing, but also the expense of guarding and training him. Add to this an indemnity to the party injured, and a *debit* would be raised, which it would require a considerable length of time to extinguish. It would, however, be necessary, frequently to exercise the power of remission to a large extent ; as the injury which he has committed is often one which the whole life’s labour of the convict would not repay ; especially if he should be weak in body, or unskilled in any profitable employment. But the Crown is in the daily exercise of such a power, and I do not anticipate any difficulty which a sound discretion would not readily dispose of.

‘ With regard to the suggestions which I have thrown out, I know by experience how easy it is to meet them by objections of detail ; and where the experiment is conducted by officers who have but weak faith in the principle of reformation, or who have not well considered what are the constituents of a reformed character, just grounds of complaint will but too often arise. The task of those with whose opinions I agree, is consequently one replete with discouragements. Ours is an experimental science, and yet we have no laboratory placed at our command. We must depend upon phenomena disclosed by the manipulations of persons who are sometimes avowed opponents of

our doctrines, sometimes mere conformists to our views, and seldom more than half converts. Whoever has traced the fate of inventions reduced to practice by persons who had but little confidence in their value, will know how to sympathise in our struggles and our disappointments. Still, I believe we are making way, and I find here and there symptoms that light is peering into places hitherto in utter darkness.

‘ Believe me, dear Sir,

‘ With sincere esteem and regard,

‘ Your faithful friend and servant,

‘ MATTHEW DAVENPORT HILL.

‘ C. B. Adderley, Esq., M.P.’

That impious contempt of futurity which prompts the eager purchase of a brief term of temporal gratification at the cost even of eternal suffering, is an attribute of human nature recognised in all times.

The following extract from Lewes’ *Life of Goethe*, places the topic in a light which may be new to the reader. The author is discoursing on Marlowe’s *Faustus* :—

‘ But we have to deal with the philosophical rather than with the dramatic treatment of the subject. The reader who opens *Faustus* under the impression that he is about to see a philosophical subject treated philosophically, will have mistaken both the character of Marlowe’s genius and of Marlowe’s epoch. *Faustus* is no more philosophical in intention than the *Jew of Malta* or *Tamberlaine the Great*. It is simply the theatrical treatment of a popular legend—a legend admirably characteristic of the spirit of those ages in which men, believing in the agency of the devil, would willingly have bartered their future existence for the satisfaction of present desires.

‘ Here, undoubtedly, is a philosophical problem, which even in the present day is constantly presenting itself to the speculative mind. Yes, even in the present day, since human nature does not change,—forms only change,—the spirit remains; nothing perishes—it only manifests itself differently. Men, it is true, no longer believe in the devil’s agency; at least, they no longer believe in the power of calling up the devil, and transacting business with him; otherwise there would be hundreds of such stories as that of Faust. But the spirit which

created that story, and rendered it credible to all Europe, remains unchanged. The sacrifice of the future to the present is the spirit of that legend. The blindness to consequences caused by the imperiousness of desire—the recklessness with which inevitable and terrible results are braved, in perfect consciousness of their being inevitable, provided that a temporary pleasure can be obtained, is the spirit which dictated Faust's barter of his soul: which daily dictates the barter of men's souls. We do not make compacts, but we throw away our lives; we have no Tempter face to face with us offering illimitable power in exchange for our futurity, but we have our own desires, imperious, insidious, and for them we barter our existence—for one moment's pleasure risking years of anguish.*

Let me close this paper by an extract from the Works of our eldest and greatest of law reformers, Lord Brougham:—

‘Again, in reasoning upon the tendency of punishment, and the motive to offend, we have always committed one serious error. We have considered crimes as insulated, and we have regarded each offence as originating in an occasional gust of passion, or view of interest; we have argued as if *all* criminals were like in their nature, and all spectacles of punishment, or exhortations to departure from wrong doing, were addressed to the same minds. Now, nothing can be more certain than that the great majority of all offences committed in every civilized community are the result of immoral character, of gross ignorance, of bad habits; and that the graver sort are committed after a series of faults less aggravated in their character. It follows, as a necessary consequence from this proposition, that when the example of penal infliction is addressed to the offender, its deterring effect is very much lessened, because it is addressed to a mind which evil habits have entirely perverted; and thus the guilty-disposed person is to be not merely deterred from doing one wrong act by the fear of punishment, but to be reclaimed from a course of thinking, feeling, and acting, into which he had fallen.

* *The Life and Works of Goethe.* By G. H. Lewes. London: 1855. Vol. ii. pp. 321-2.

‘It is no doubt to be set on the other side of the account, that the knowledge possessed by the community of punishments being by the law denounced, and being by the administration of that law actually inflicted, tends to produce a habit of thinking and feeling in the people; and by connecting in their minds the punishment with the offence, may create a general aversion to evil practices. This in truth is the only effect produced by punishment; but for this effect it would be wholly inoperative, and would indeed be only an aggravation of the evil occasioned by crimes. But it is also certain that this habit has to struggle with other propensities, which are generally found to be more powerful; that ignorance, evil association, indulgence in lawless passions (first of a less and afterwards of a more hateful kind), the familiar contemplation of vicious excesses, the observation, often the actual experience, of escape from penal visitation, the spectacle of the law so often failing to be effectually executed—all engender bad habits, against which the habit of regarding vice as connected with punishment, contends in a vain and fruitless conflict. Hence, the only possible efficacy of the penal code, however wisely framed or ably enforced, becomes feeble to its purpose—the repression of offences. For against the habit of reflecting on the criminal act as a thing punishable, is to be further set the temptation to do it as a thing desirable; and thus that habit, already enfeebled by the other circumstances just enumerated, is easily overpowered by the interest or the passion of the hour.

‘I fear we may upon the whole regard the criminals who infest society as being a kind of class who have turned crime into a trade or calling, and no improvements in the administration of criminal justice have yet been able to put down the business, or even to prevent those who follow it from being a very numerous body.

‘Now, when it is considered how many offences a thief must commit to earn his daily bread, it becomes quite evident that absolute impunity is the rule, and detection only the rare and as it were accidental exception. It may be assumed, without exaggeration, that if one offence in ten was followed by detection, the class could not exist. That his offences must be numerous to enable a depredator to live, may be further proved by considering that his profits are not measured by the losses

of his victims, but by the miserable pittance which the receiver allows to him, *the capitalist*, who must be paid, not merely for the *ordinary* risks of trade but for the danger of discovery, and for the low price which alone he is able to command in the market.

‘ But further, were it possible that in time a species of certainty might be attained, so that a course of crime should inevitably lead to punishment, all would not be enough; the offender, in the chains of ignorance and bad habits, would pursue his calling, and look upon the gallows itself at a distance with as much calmness as a soldier regards the slaughter of next year’s campaign. Why should we expect the thief to abandon his pursuits because years to come he will suffer punishment, when we see the educated man will not forego his bottle, knowing and admitting the inevitable consequences of intemperance? Artisans, who labour in unwholesome manufactures, sell themselves to certain death for a small increase of wages, which excess over the ordinary rate would in truth amount only to a trifling sum for their whole lives. While file-cutters had not the benefit of the blast to disperse the filings with which the air is filled by the dry grinding, every workman knew for certain that he must die soon after the age of forty. Workers in whitelead and brass are still exposed to the imminent risk of palsy—a sentence of death by hunger in *their* case. Yet how small an increase of wages attracts men from wholesome employment to those hurtful trades! But the same persons would probably shrink from exposing themselves to the risk of *instant* death, although the chances of escape might be in their favour. Hence, even could we attain the point of absolute certainty (a point assuredly that never can be reached), we should still have done little towards repressing crime unless we could also add celerity to certainty, and ensure to each offender the penal infliction due to his crimes within a very short period of his committing them. Either of these things, it is evident, is most likely never to be accomplished; the accomplishment of both together we may safely pronounce to be wholly impossible.

‘ Now, let us see whether these positions (which we might well deduce *à priori* from the most superficial knowledge of

human nature), are borne out or contradicted by experience. And in arguing this point, instead of having recourse to general statistical details upon the amount of crimes, their proportion to the numbers of the people, or their increase of late years, let us at once resort to a view of the subject which affords a test (severe indeed as regards its unerring certainty, but perfectly fair towards the subject under examination),—of the efficacy of punishment as a means of preventing offences by operating on the fears of men, or, what is the same thing, influencing their calculations of self-interest.

‘It will not be denied, that if the sight of punishment, still more if the hearing of it, can produce any effect, the actual experience of it must produce still more. Consequently, if the undergoing it has little power to deter the sufferer from again offending, his seeing another undergoing it can have still less; and his only hearing of its being inflicted can least of all have this deterring effect. Now, how stands the fact? I have before me the returns of punishment in Manchester for nineteen years, ending 1827, and I find that of those who during that period were convicted of felony, between a third and a fourth were re-committed to the same gaol for other felonies, beside the great number who may have been committed to other prisons. Of the twelve or thirteen thousand persons committed for felony during three years to the gaols of Salford and Leeds, between three and four thousand relapsed after their sentences expired, or at least after they were liberated. I have before me similar accounts from Hull. But we have the means of tracing this important subject more clearly. The magistrates of Liverpool lately investigated the cases of fourteen boys (taken at random and without selection) under seventeen years of age, and they found that three had been no less than nine times each fully committed for trial in the course of seven years—one of them having been so committed no less than nineteen times; and a child of only seven years old had begun his commitments at that age, and in two years been condemned four times—three times to imprisonment for different terms, and the fourth time to transportation. The evidence of persons well acquainted with the subject, who were examined by the House of Commons in 1828, shows that, though there is no punishment

so much dreaded by these young offenders as whipping, yet the impression of it soon wears away and fades from their memory.* I surely have no occasion to go further in quest of evidence, if indeed any were wanted, to demonstrate that the effect of punishment in deterring by example is exceedingly feeble upon the whole, and prodigiously overrated in all systems of criminal jurisprudence, as well by the philosophers who speculate upon the construction of codes, as by the lawgivers who trust to statutes for a protection against offences.

‘ But this is far from being the worst of the errors that have been committed. There are *preventives* of crime, remedies for moral evil, which both those classes have unhappily overlooked, and no doubt this oversight has been in a great measure owing to their exclusively directing their views towards the all but hopeless task of deterring by the fear of punishment.’†

* *Report of Police Committee, 1838.* Evidence of Mr. Wontner, Mr. Capper, and others.

† *On the Inefficacy of simply Penal Legislation.* By Lord Brougham. Authorised Report of the First Provincial Meeting of the National Reformatory Union. Bristol : Arrowsmith. 1856. See also *Works of Lord Brougham*, vol. viii. p. 242. London : Griffin & Co. 1856.

CHARGE OF MARCH, 1854.

GENTLEMEN OF THE GRAND JURY,—

I HAVE long held it to be no unimportant branch of the duties of a judge exercising a jurisdiction high or low in criminal matters, frequently to invite the attention of Grand Juries to the causes of crime; and more especially to such of them as by the due exercise of influence on the part of individuals filling your social position may be, if not entirely removed, at all events much diminished. The progress of knowledge, in respect of crime, follows the analogy of all other scientific investigations. The subject ramifies and connects itself with matters not formerly suspected of having any relation, much less any practical relation, to the topic in hand. Half a century ago, the attempt to strengthen our ability for grappling with crime, by exploring the sources from whence flow diseases of our bodies, would have been thought strangely inappropriate to the duties of a court of justice. The essayist would perhaps have been indulged in speculations of this or of any other kind, by the few who take pleasure in inquiries which are not thought to have much bearing on the affairs of life. But men of business, exercising the duties of a solemn office like yours, would have lent but an impatient ear to discussions resembling that to which I am about to call your attention.

Some twenty years have now passed since the sanitary condition of the dwellings inhabited by the poorer classes attracted the attention of sagacious men, moving in different walks of life, yet each in his own pursuit finding the subject forced upon his attention. Thus Dr. Southwood Smith, by his long experience in hospital practice, and by the inquiries which qualified him to produce his valuable work on Fever, was urged to reflect on the imperative necessity for striking at the root of the mischief, and for paralyzing the forces of the enemy, instead of limiting himself to curing the wounds which it had inflicted. On the other hand, Mr. Edwin Chadwick, whose official duties led him to investigate the causes of pauperism, found that it often

sprung from disease; sometimes the connexion was close and apparent, sometimes so remote as to escape the attention of all but the zealous and practised observer. The next step in the inquiry would be to ascertain the causes of disease; and thus the physician and the Secretary of the Poor Law Board, approaching the subject from opposite sides, arrived at the same point, and met upon common ground. To these gentlemen and their colleagues it became manifest that insufficient drainage and bad ventilation were the main causes of those preventible diseases, which work as a standing plague to ravage the population of the courts and alleys, and the inferior streets of our cities. These causes were found to be very widely in action; and, indeed, not confined to the dwellings, or even the districts occupied by the poor. For although, as their pestiferous effect was not in these latter quarters counteracted by opposing influences, it was here that their baneful powers were most deadly, yet from the ignorance of builders, or the inadvertence of the wealthier class to the conditions of their own health and comfort, there stood, and I am sorry to say there yet stand, even in the best streets of almost every town, magazines of insalubrity, which a few short, well-directed efforts would soon empty and destroy.

That some considerable connexion must exist between disease and poverty is so obvious, that one is astonished to find it could so long have been overlooked; practically overlooked, I mean, for that it was either unknown or controverted cannot be for a moment supposed. Every medical man knew that the terrible fevers which always either raged or smouldered in the worst parts of our towns, attacked, as if by preference, persons in the prime of life; thus depriving young families of their natural protectors, and throwing them into destitution. But if the connexion between disease and poverty had been overlooked, we need not be surprised that no similar connexion had been observed between disease and crime; or between the coincidence of unwholesome dwellings and the abodes of a criminal population. Yet it was only necessary to observe with ordinary care the operation of unwholesome habitations and districts upon those who inhabit them, to arrive at the conclusion that such a connexion must exist. The state of health is gradually and permanently lowered. The energies are weakened, labour

becomes more laborious ; indeed, all the powers of mind and body are debilitated. In this unhappy condition the ignorant sufferer but too often flies for relief to the stimulus of ardent liquors ; and snatches from time to time a few moments of exhilaration and activity, bought, however, at the price of a more lamentable depression, gradually bringing the doomed victim under the curse of an enthralling habit of intemperance, alike fatal to estate, to body, and to soul. And thus the population of these districts is year after year, and generation after generation, exposed to the accumulated sufferings of disease, drunkenness, indigence, and criminality.

That many must escape these dangers only shows that even among the lowest of our kind there is much of good ; and this consideration should urge us onward in our exertions to aid them in freeing themselves from that crowd of adverse circumstances by which they are surrounded and oppressed. With regard to the first of those conditions, insufficient drainage, it is quite clear that society in its aggregate capacity is mainly answerable for this crying evil. Even the richest among us has no absolute mastery over the drainage of his neighbourhood ; the consent and co-operation of others being necessary to such arrangements as will enable him to attain his object. But with regard to the poor man, he is the helpless victim of public neglect ; add to which he is also at the mercy of private cupidity, for even if the municipal authorities of the town which he inhabits have perfected a system of street drainage, he may yet have no benefit from it by reason of the ill-construction of his dwelling ; or because the owner declines to take advantage of the appliances which have been placed at his command. Now I am not disposed to turn round with stern severity upon any particular class for conduct in respect of which all in our station of life are more or less responsible ; all of us therefore needing the protection of a general amnesty. Our excuse has hitherto been our ignorance, but that excuse we can plead no longer. Each of us must forthwith shake off lethargy ; and when we have done our best we may then, but not till then, turn to the class of house owners, and justly warn them, that as they have most in their power, so the country will mainly look to them for prompt and efficient aid in the great work before us.

From a pamphlet which I hold in my hand, written by Dr.

Southwood Smith, and published, I believe, under the sanction of the General Board of Health, I learn that the annual mortality in houses which have been erected in various parts of London by the Metropolitan Association for Improving the Dwellings of the Industrious Classes, is only 7 in 1000; while the average of the whole metropolis is more than three times as large, namely, 22 in 1000; and the author goes on to state, that the mortality of one of the worst portions of the metropolitan districts, a mass of houses called the Potteries, in the parish of Kensington, rises to the fearful height of 40 in 1000, being nearly six times the proportion of that in the houses erected by the Association; although these latter dwellings, inasmuch as they are built for the accommodation of the working class, are necessarily placed in neighbourhoods which are the resort of that order, and consequently not in the most open and salubrious parts. But to convince the most sceptical that it is from the circumstance of these houses having been built upon sanitary principles that they are found to stand thus high in the scale of salubrity, the author cites a most conclusive fact, which I will lay before you in his own words:—

‘Lambeth Square is situated in the Waterloo Road district of the parish of Lambeth. It consists of 37 eight-roomed houses, which let at about 28*l.* a-year, and are chiefly occupied by the foremen of large establishments, and the more skilled and highly-paid class of artizans. In outward appearance, and in their general aspect within, these houses are very superior to the ordinary abodes of the same class in other parts of the metropolis, and present no obvious cause of peculiar unhealthiness.

‘According to the last census, this square contains a population of 434 souls. Among this number, on a house-to-house examination, it was found that in one year (1851) there had occurred 80 attacks of disease, and 24 deaths; that is, nearly one person in every five had been laid up with sickness, which had proved fatal in the proportion of between 50 and 60 in 1000.

‘When built, about twenty years ago, these houses had been fitted up with untrapped closets, communicating with flat-bottomed brick drains, then in universal use. A number of the drains passed directly under the houses; they were wholly unprovided with any regular water-supply for cleansing; consequently, instead of carrying away the ordure, they retained it within the houses; and the emanations arising from the stagnant mass of putrifying matter were carried back into the houses, through the open closets, in a proportion increasing with the obstructions in the drains.

‘At the beginning of 1852 a new system of drainage was applied to the whole square. Water-closets were substituted for cesspools, and stoneware pipes for brick drains, and the apparatus was provided with an adequate supply of water.

‘By these improvements the houses were placed in the same sanitary condition

essentially as the Society's dwellings. The result on the health of the inhabitants was strikingly similar. On a re-examination of this property in November of the present year (1853), it was found that the mortality had been reduced from 55 in 1000, to 13 in 1000.'

Let no imputation, Gentlemen, rest upon the proprietor, whoever he may be, for the original construction of the houses. Let that error be ascribed to the general absence of knowledge relating to the sanitary conditions to which I have adverted; let us rather give him praise for being among the first to rectify the mistake which he had committed. Yet even he, I am persuaded, will never be able to look back on the waste of human life which that mistake has caused, without feelings of the keenest regret; however free that regret may be from any tincture of remorse. By the change in the drainage it appears that the deaths had been reduced in the proportion of 4 to 1, so that we may conclude that if it had taken place prior to the year 1851, the 24 deaths of that year would have been reduced to 6; and consequently, that the number of lives spared to their families and their country would have amounted in one year to 18! I shrink from dwelling upon the carnage which its 20 years of noisome drains must have inflicted on the community of Lambeth Square. But now that the causes of this destruction are understood, it well behoves every proprietor of such tenements to ask himself how he can, for the future, answer it to his conscience to let a similar mischief remain. Or if the state of the public drainage should offer impediments, how he can justify himself for not doing all that in him lies towards a mitigation of so fearful an evil. It is a curious fact with regard to our moral perceptions, that so far from our indignation being enhanced in proportion to the amount of crime committed, it seems frequently to be weakened and dissipated by the magnitude of the offence—sometimes indeed changed into admiration. To say that 'one murder makes a villain, millions a hero,' is but the pardonable exaggeration of an incontestable truth, not altogether inapplicable to the question before us. For myself, I do not fear but that one of two events will assuredly come to pass; either self-reproach and the power of public opinion will prevent any proprietor from inviting or permitting human beings to dwell in a house infected by the poisonous exhalations from cesspools and foul drains, or he will as assuredly be brought

under the animadversion of the criminal law as if he administered strychnine or arsenic.

But our immediate concern is with the relation between sanitary arrangements and crime; and you will rejoice, therefore, to learn that the results of an improved sanitary condition of dwellings, are not only advantageous to the physical, but to the moral health of those among the indigent classes who have enjoyed the advantage of this reformation. In the year 1851, we obtained from the Legislature, by the exertions of the Earl of Shaftesbury, what is called the 'Common Lodging Houses Act;' which gives to the local authorities power to remove compulsorily in those hives or dens of population,—the lodgings resorted to by the migratory, and oftentimes by the stationary poor,—many causes of complaint connected with the neglect of sanitary measures. This enactment has been, Dr. Smith informs us, grievously neglected in many towns; but still it has been applied, he says, in a sufficient number to indicate the kind and amount of good it is capable of effecting.

'From the following examples,' he proceeds, 'selected from a great number of similar statements contained in a return recently presented to Parliament, it will be seen that the Common Lodging Houses Act, by enforcing certain conditions of cleanliness, and by preventing overcrowding, has extended to vagrants and others, forming the very lowest portion of the population, the like immunity from disease which the improved dwellings have secured to the industrious labourer and artizan.

'In the town of Wigan, for example, there are 24 lodging houses, through which have passed, during the last year, 29,655 lodgers. The Superintendent of Police reports, 'There has not been a single case of fever in any one of those houses since the Act has been in force.'

'The town of Wolverhampton affords a still more striking instance. In this town there are 200 lodging houses, through which [*are said to*] have passed, during the year, the incredible number of 511,000 lodgers. The Superintendent of Police reports, 'There has not been a single case of fever in these houses since the Lodging Houses Act has been in force, in July, 1852.'

'Statements to the same effect have been received from Morpeth and Carlisle.

'From a return made to the Secretary of State for the Home Department by Captain Hay, one of the Metropolitan Police Commissioners, who has been entrusted with the execution of this Act in the Metropolis, it appears that, in the week ending 23rd of October, 1853, there were reported within the Metropolitan Police district 7253 lodging houses. At that time the keepers of these houses had all been served with notice to register in conformity with the Act. Of this number 1308 had permanently registered, and were under efficient regulation. In the houses thus reported, the lodgers numbered at least 25,000. During the quarter ending the 23rd October, there had not occurred a case of fever in any one of these houses; yet, before they were under regulation, twenty cases of fever have been received into the London Fever Hospital, from a single house, in the course of a few weeks.

'In the whole of the improved dwellings the exemption from cholera has been as complete as from typhus. During the entire course of the epidemic in 1848 and 1849, no case of cholera occurred in any one of these dwellings, though the pestilence raged in all the districts in which they are situated, and there were instances of two, and even four, deaths in single houses close to their very walls. Since the reappearance of the pestilence this autumn, it has numbered as many as twenty victims in one street in the metropolis, and six even in one house, but as yet no case of the disease has occurred in any of the improved dwellings.'

Gentlemen, this gratifying passage well introduces another which I had principally in view in making the citation:—

'Moral pestilence has, at the same time, been checked. The intemperate have become sober, and the disorderly well conducted, since taking up their abode in these healthful and peaceful dwellings. No charge of crime, no complaint even of disturbance, has been lodged at any police station against a resident in these dwellings since their first occupancy.

'On the classes resorting to common lodging houses the change effected is still more striking. 'Their whole conduct,' says [Mr. James] one of the magistrates of Birmingham, 'is far better since the Act came into operation. Before that time, their manner towards the police and magistrates was sullen and coarse; now it is respectful, candid, and open—they seem to be satisfied that they are doing right.'

'Since they have been under regulation,' says another highly-competent witness, 'neither the houses nor the inhabitants could be recognised as the same; the lodgers take an active part in assisting the police in enforcing the regulations—the value of the improvement effected to society generally, and to the parties immediately concerned, is incalculable.'

'The Superintendent of Police at Carlisle says, 'Vice and immorality are much less; crime has decreased to a great extent.'

'The Inspector of Common Lodging Houses in Wolverhampton bears the same testimony.

'The Clerk of the Local Board of Health of Morpeth says,—'Since inspection under the Act, crime has very much diminished; since the Act was applied, there has not been one case of felony or misdemeanour in the borough, an exemption from crime which I never knew before.'

Thus far, Gentlemen, I have been reading from Dr. Southwood Smith, on whom I place great reliance, having had the honour of his acquaintance for many years. Still, however, it is fair to observe, that every new remedy, whether physical or moral, is apt to be over-estimated at first; and I certainly do not expect that, however perfect the sanitary arrangements of Morpeth may be, it will remain for any long period altogether exempt from crime; especially as I find by the last census that it contains a population exceeding ten thousand in number.

It would have been a dereliction of duty on my part to give circulation, from the bench, to statements—however high the

authority by which they are sanctioned—without taking measures to test, so far as my opportunities permit, the accuracy of the facts alleged. As respects this town, I have consulted Mr. Stephens, the Superintendent of Police, and Mr. Simons, one of your medical officers. Each of these gentlemen is known to you for his experience, his intelligence, and his zeal in executing the duties of his office. The one is peculiarly conversant with the hotbeds of crime in the borough, and the other with the sanitary state of its various quarters; and they both agree that the abodes of disease and the abodes of criminals are the same. I have instituted a similar inquiry with regard to Bristol, and the results very nearly correspond. We must, however, beware of raising our hopes too high, or we shall suffer from disappointment, not unfrequently the parent of languor and indifference. Part of the amelioration must, I think, be attributed to a change in the class of lodgers or occupants of the improved dwellings. Mr. Simons, in a letter to Mr. Stephens, written very lately, makes the following statement:—

‘In reference to the condition of the Registered Lodging Houses, I have no hesitation in saying that they have much improved in every respect since the introduction of the Act. They are cleaner, better ventilated, much more free from disease, much more orderly, and appear to be inhabited by a better class of people. I seldom or never see intoxication or hear profane swearing. The persons inhabiting these houses appear to be hawkers, tramps, and labourers. I was much struck, during the late inclement weather, with the appearance of comfort in most of these houses, by reason of the association together of persons warmed by the same fire, and amused by the general conversation of the party. In this way they are kept at home, and protected from what would otherwise be the irresistible attraction of the public-house. The class of dwellings where disease and poverty most prevail are Unregistered Lodging Houses: these are to be found in most of the low courts in my district, and are principally inhabited by the dirty and low Irish. When the house consists of three rooms, each will have its family; and thus each room is occupied as a sitting, working, and sleeping room: the consequence of such a system is dirty habits, immorality, disease, and indifference to all improvement. The accommodations for purposes which do not admit of being specified are bad in every respect: too small, badly constructed, and not fit to be used six months in the twelve; exposing to view the most revolting sights, and utterly destructive to all sense of decency in both sexes. Very little fever exists in the Registered Lodging Houses; much more in the Unregistered. I think there is less illness in Registered Lodging Houses than in other houses not under supervision.’

To this letter from Mr. Simons let me add a curious anecdote related by a London Missionary:—

'I was much struck a short time ago, while visiting one of these houses in Westminster, with the improved condition of the place; so much so, that the keeper herself seemed to have become a new woman. I asked her if she were the same party who kept the house twelve months ago? She replied in the affirmative, and expressed her surprise that I did not know her; she asked the reason. I told her she looked so much more comfortable and younger like. She said, 'You know, sir, they have made a new law for our houses: now we must keep them much cleaner and more comfortable for our lodgers, and it would never do for me not to look clean and tidy too; I like it much better now, although I did not like it much at first.'

Gentlemen, some light has been thrown by these extracts on the manner in which sanitary improvements operate in the diminution of crime. With restored health, temptations to indolence and inebriety diminish in force,—one amendment prompts another: self-respect is taught, gradually the aspirations are elevated, and a general course of improvement set on foot. But again, let us guard ourselves against extravagant expectations; and especially against hoping that the moral results will always keep pace with the physical benefits. It would be rash indeed to expect that the best conducted drainage or the most perfect ventilation will on the sudden produce any signal change in habits of intoxication or profane swearing. Whoever has given due attention to the subject must, I think, have arrived at the conclusion, that the aggregate of crime in any age or country is produced by a multiplicity of causes, and asks for a multiplicity of remedies. Early training, the general spread of knowledge, and of sympathy between class and class, more earnest and practical convictions, moral and religious, with a better observance of all that relates to the health of body and mind, and an improved system of police jurisprudence and reformatory discipline—it is to all these various appliances, acting together in harmony, and not to any one alone, that I look forward, as I do with confidence, for the gradual but certain diminution of crime. That we shall move on but slowly is what I expect and believe. Long experience has made me but too well acquainted with the numerous impediments which encumber our path, to admit of my entertaining expectations of a rapid progress. That we shall somewhat amend our pace I venture to hope, for indeed it has hitherto been that of the tortoise. But if it should be found that in spite of our endeavours we cannot excel this type of slowness in speed, let us at all events emulate him in perseverance.

To return, Gentlemen, to the dwellings of the poor. Let such of us as may have no property of this kind remember that we ought not to shrink from taking our share of the burden ; which, though it must necessarily fall heavier on some classes than on others, must not be evaded by any who are possessed of competent means. The Improved Dwellings in London, to which I first called your attention, were erected by a Society which raised a capital for that purpose by virtue of a Royal Charter, limiting the liability of every Shareholder to the amount of his shares, but restricting also his possibility of profit to 5 per cent. on the capital expended. The privilege of limited liability was granted in consideration of the benevolent purpose for which the Society is founded ; and it is to be regretted that the Crown was unable to take another step in this course of liberality. The cost of the two Charters, granted to the Society to enable them to accomplish objects essential to the public welfare, amounted, we learn from Dr. Southwood Smith, to the exorbitant sum of 1430*l.* ! Gentlemen, we shall not, I am sure, deny that nothing can be more delightful than

‘ To taste the luxury of doing good.’

We shall also admit that we must pay for our enjoyments, and we are told by financiers that luxuries are fair subjects for taxation ; yet, in spite of the demands which must be made on our fiscal resources by the War, I cannot but hope that the enormous rate of duty which is thus levied on the article ‘ benevolence,’ will be found safely to admit of considerable and immediate reduction.

Under one of the Society’s Charters, Branch Institutions may be founded in any part of England and Wales, and they will be clothed with a like privilege of limited liability ; the parent Society receiving the gratuity of a half per cent. on the outlay, and another half per cent. from year to year on the same amount ; as a compensation for the use of the Charter, and also for some other facilities which it supplies to those affiliated bodies. Four Branches have been already formed. From two of them—the one at Brighton, which has been in action for some years, and the other at Dudley, which is preparing to build—I have received assurances that their connexion with the parent Society is highly satisfactory ; relieving them from

the expense and delay of obtaining a Charter, and giving them all the benefit of the somewhat costly experience of those who led the way in this good work; while on the other hand the Branch Institutions do not feel themselves under any constraint, being left to the exercise of their own discretion.

Into the financial results, either of the Parent or of the Branch Societies, I shall not enter. Already a return of moderate interest has been obtained; and as the classes sought to be principally benefited become more and more aware of the advantages in store for them, it may fairly be expected that the profits will be augmented. At the same time, I do not feel myself justified in suggesting these undertakings as affording the means of gainful investments. In the present state of our experience they should be instituted on other grounds, and the expectation of profit should be a secondary consideration.

Another means of accomplishing the same purpose is furnished by the 'Labouring Classes' Lodging Houses Act, 1851.' By the powers of this Act, Municipal Corporations and some other bodies are enabled to borrow money, on the security of their rates, for erecting new dwellings or for altering existing houses. I have not been able to learn that this Act, which appears to me to be well framed for the attainment of the end in view, has yet been adopted in any instance. Representative bodies are excusably reluctant to increase the burdens which press upon their constituents; and although it seems quite clear that after no long period the outlay of capital in any town, which should have the effect of rendering it more salubrious, would, in various ways, operate in relief of the rates—yet, as at first it would produce some slight augmentation of their amount, it may be that these bodies are waiting the growth of a public opinion in favour of the measure. In justice to your municipal authorities I feel bound to remark that the call for their interposition is not so pressing in this place as in many others. I have examined the returns of the last census for every town in the Island containing more than 100,000 inhabitants; and I find that, as regards the proportion of houses to population, Birmingham stands, with the single exception of Leeds, at the head of the list. We have also, in the site of our borough, in its elevation above the sea, and in the subsoil of a great portion of it, sanitary advantages over other places. Great merit must

also be conceded to the Council for the vast improvements which they have effected in the drainage. But I am sure you will agree with me, that whatever may be our comparative state, the positive evils existing among us are such as to demand immediate attention, and unwearied exertions for their extirpation; and I think it cannot be denied, that as the proposed changes would remove many dangers from which no inhabitant, high or low, can be sure to escape, and would tend to the diminution of pauperism and crime, which throw heavy burdens on the borough, justice points to the expense being levied on the whole community which is to receive the benefit, rather than it should be cast upon the few who happen to feel more than an ordinary interest in the welfare of their neighbours. But, passing by the particular means by which the object is to be accomplished, I am led to believe that you and your fellow-townsmen have it in your power to make Birmingham as distinguished for the health and morals of its inhabitants, as it is, and long has been, for their industry, their perseverance, and their ingenuity.

Let me, then, in conclusion, invite your attention to the whole subject. Investigate for yourselves. Inquire first whether any interposition, either by benevolent institutions or by local authorities, is desirable; and if you find, as I firmly believe you will, that such interposition is not only expedient, but that it stands before you as an imperative duty, you will next have to consider which of the two modes pointed out should be selected; and having made up your minds on the whole question, I would respectfully but most earnestly call upon you to act, each in your own position, and according to your own means and influence, as your consciences may direct.

Gentlemen, one word more and I have done. The awful scourge of cholera hangs over our country while I speak, or rather, it is at this moment descending upon us. We must abide the visitation in our actual state, such as it is. But let the nation at least draw this lesson from past neglect, that if we pause during the rage of the pestilence, we shall, when it relaxes its force, come again under the old temptation to procrastinate yet further, until it gathers up its virulence anew, and still finds us defenceless against its assaults! On the other hand, if we forthwith make a right use of our affliction, we

may turn our punishment into a blessing : we may insure to thousands, nay, millions of our brethren, a larger measure of health to body and to soul than it has ever yet been their lot to enjoy, or our privilege to witness.

SEQUEL.

INFLUENCE OF DWELLINGS FOR PROMOTING TEMPERANCE OR THE CONTRARY.

[Memorandum of a conversation with Dr. Southwood Smith, June, 1854.]

THE bettering of dwellings, by improved drainage and ventilation, produces a marked effect on the drinking habits of the inhabitants. The atmosphere being relieved of its heavy and poisonous ingredients, the dweller is also relieved from that craving for stimulants produced by living in bad air ; and if the habit of drinking has not become inveterate, as the craving passes away, so does the indulgence ; or at least, it is very much lessened. The wish for improvement arises in the mind. The luxury of a table is aspired to, a couple of chairs follow, by and by a few ornaments appear on the chimney-piece, and last of all, one or two flowers in pots are placed outside the windows. Meanwhile, cleanliness and neatness have made progress within-side the room, and the flowers, like the rainbow after the flood, show that the poor depressed human being, sunk in the deluge of misery and vice, has at length seen dry land,—the waters have subsided, and his future is brightened with the prospect of happiness.

In spite of all that has been done for the sanitary improvement of our large towns, a careful inspection of the statistics of mortality, combined with information which I have obtained from persons of the highest authority,—who have made statistics in general, or sanitary investigations in particular, the study of their lives,—has convinced me of the mournful truth that all our large and dense populations are steadily becoming less and less healthy. Doubtless, the exertions which have been made since

the subject has attracted public attention have done much towards diminishing the rate of downward progress, but far more must be accomplished than has yet even been attempted, before that progress can be arrested. Even yet the popular feeling has not been sufficiently roused; municipal bodies, which must be taken to reflect the opinions of those whom they represent, are by no means so sensitive to the necessity for checking preventible disease, by every means which money and science place at our disposal, as to be willing to incur the outlay requisite for success.

I copy with much pain the last Report made by Mr. Townsend, the late medical officer of Birmingham:—

‘BOROUGH OF BIRMINGHAM.

‘At a Monthly Meeting of the Council, held on Tuesday, the Third day of October, 1854, the Mayor laid before the Council a communication from the Officer of Health, addressed to the Borough Inspection Committee; which that Committee by resolution and deputation had requested him to lay before the Council.

‘The communication having been read and received, was ordered to be printed, and a copy forwarded to each member of the Council.

‘*To the Borough Inspection Committee.*

‘GENTLEMEN—

‘In compliance with the request contained in your minute, No. 809, I beg leave to offer the following suggestions for additional precautions against epidemic disease.

‘1. That the Medical Officer of Health be supplied with the weekly death returns from the local Superintendent Registrar, on the terms proposed by him to your Committee, until the Town Council is enabled to obtain them by other arrangements.

‘2. That there should be an immediate increase in the number of assistants in the Inspector of Nuisances department, the duties of that office being very inadequately performed, for the want of a sufficient staff.

‘3. That all streets, alleys, and courts should be periodically inspected; all accumulation of filth removed; all houses in a dirty or otherwise unwholesome condition, cleansed and lime-

washed ; and where contagious or infectious diseases prevail, the sick removed if practicable, and urged to obtain immediate medical aid, parochial or other gratuitous assistance being rendered easily accessible to those whose means require it.

‘ 4. That the attention of the Borough Surveyor be immediately called to all cases where bad drainage is found to exist, or the pavements are in an improper state ; and that means be adopted for giving an adequate quantity of the best attainable water to those courts and houses where the present supply is insufficient in quantity, or unfitted for domestic use.

‘ 5. That strict supervision be exercised over all slaughter-houses, knackers’ yards, boiling houses, manure depôts, and all such other places, where trades prejudicial to public health are carried on ; and reports made of any circumstance arising from their condition, requiring attention.

‘ 6. That no open midden, cesspool, or pigsty, in crowded courts, or in close contiguity to dwelling-houses, be permitted after the expiration of *two* days’ notice.

‘ 7. That no dwelling-house or workshop be suffered to be occupied over privies or cesspools.

‘ 8. That the Medical Officer of Health should personally inspect, if possible, all those localities in which deaths from fever, cholera, or other zymotic diseases are known to have occurred,

‘ 9. That the lodging-house system be revised by the Medical Officer of Health, the minimum number of cubic feet to each lodger increased from 450 to 600 feet, and the number of lodgers regulated by him according to the locality, cleanliness, and general means of ventilation.

‘ 10. In the event of a sudden outbreak of epidemic cholera, that a complete and efficiently organized system of house to house visitation by medical men be immediately adopted, and such medical men and the Inspector of Nuisances to report daily to the Medical Officer of Health during the continuance of such epidemic.

‘ It must so frequently have occurred to every member of your Committee that many houses are constantly being erected, back to back, with very insufficient ventilation, and in defiance of, or with an utter disregard to, all sanitary considerations ; to meet this, I deem it of the greatest moment that your next

bill should contain a clause, requiring all houses to be erected on certain approved principles of ventilation and drainage, and that every court should have a sufficient number of privies, capable of being well flushed, by means of self-acting apparatus.

‘The preceding suggestions embrace all that I am desirous of bringing under your consideration at the present moment, but I cannot allow this occasion to pass without making a few observations on the debate which took place in the Town Council, on the application of your Committee for the weekly death returns, as reported in the local papers of Saturday last.

‘You will observe that I have placed this suggestion first on the list, and I have done so notwithstanding the result of the debate, from a conviction of their great importance, and a sense of the solemn responsibility which devolves upon me, as your Officer of Health, in the performance of my duties; and I must again urge you to use every argument to induce the Council to re-consider their decision on this momentous question.

‘I cannot say that I felt great surprise, that your report should not have received the approval of a larger number of the Town Council: for much as is said of reform in the present day, the Corporation of this Borough have exhibited no undue haste to promote it in relation to sanitary questions; yet, surely it might have acted not unwisely by following the example of those towns in which this subject has engaged public attention with so much satisfaction during several past years, and with still more future promise. Here, unfortunately, we have evidence of how much may be said, and how little accomplished, by those who, though their motto is ‘Forward,’ hesitate to advance one single step, whilst the fate of thousands awaits their decision.

‘I regretted to observe the name of one member of your Committee as expressing an opinion that such returns ‘were unnecessary; but as that gentleman has not in any instance been present at your meetings since my appointment to this office, I must presume that he was unacquainted with the facts presented by me, and which, had he known them, might possibly have led him to an opposite conclusion.

‘It was also remarked, that ‘we might pay too much for statistics, and that the parish weekly returns of sickness and

death afford a very sufficient knowledge of the health of the Borough ;' to this I reply, that the weekly death returns form the very basis of the usefulness of Medical Officers of Health ; from them it is ascertained where deaths from preventible causes have occurred, and would almost of necessity again occur if those causes were not removed. Having served this most valuable purpose, I certainly cannot see why they should not be made available for further use, unless, indeed, any advantage could be hoped for by not suffering the public to know how much, or how little the health of the borough had improved under the watchful superintendence of its faithful guardians.

' To the other assertion I may remark, that the parish records of Birmingham and Aston, of which the Officer of Health can now avail himself, show the average weekly number of deaths to be about 20, whilst the weekly average of the entire borough was last year about 128. What then can be the reason for remaining satisfied with a knowledge of the cause of death in one-sixth of the number only ?

' There is one other point which merits passing notice. It was remarked that my deservedly 'esteemed predecessor did not require these returns, yet he was always ready to give statistical information of the health of the borough ;' I apprehend, statistics of death not based upon the returns could be of little service indeed ; and I beg with the utmost respect to inform your Committee, that not one of my predecessors either took the title or performed the customary duties of Medical Officer of Health ; neither has the Council, at present, accorded to myself the means of fully and satisfactorily carrying out the object of my appointment in its fullest sense. Let us note the consequences,—in 1849 the death rate for the Parish of Birmingham was 23.26 per 1000. Parish of Aston, 19.61. Parish of Edgbaston, 11.80. What would your statistics show it to have been four years later, from June 30th, 1853, to the same period in 1854 ?

' Parish of Birmingham	30.84 per 1000
„ Aston	nearly 27 „ „ „
„ Edgbaston, including the	
whole of King's Norton	23.06 „ „

Whilst, if we take the first half only of the present year, we find that in the Parish of Birmingham the mortality has even reached

the unprecedented rate in Birmingham of 33.86 per 1000!! Gentlemen, I leave these facts to your own consideration; it is needless for me to make any comment,—I will but remind you, that in consequence of our increasing death-rate, from fifteen to eighteen hundred more persons died in one year, 1853–54, than in 1849–50, after allowing for increase of population—or than ought to have died, according to the rate of mortality in the last-named period, distant only four years!! Suffer me then to inquire where and with whom does this fearful responsibility rest? Is it with the Corporation of Birmingham and their Officers of Health, or is it not? Yet will I say that half a score of murders, or the sacrifice of so many lives from a single accident at our Central Railway Station, or the falling of a house, would create far more consternation,—far more sympathy, than have these four times—let us say—TEN hundred lives; which, in as many years, death has prematurely and silently snatched from among us. It is much to be apprehended, that in four years hence the same sad tale of past neglect, with its terrible consequences, may be repeated, without the aid even of that much dreaded disease, cholera; which is, in truth, even less to be feared than other diseases produced by similar causes, and *annually* destroying many hundreds of our population.

‘As to the question of making this a paid appointment, and inviting the most eminent members of the profession to become candidates, permit me to say that it is one to which I shall feel no sort of objection; and I trust the public will duly appreciate so wise a decision. Whenever that is arrived at, I shall have infinite satisfaction in resigning the trust which the Council has reposed in me,—to place myself on the same equality with others for re-election, should the proposed salary be adequate to the heavy labours of the most important office that can be filled by any member of the medical profession.

‘I shall offer no apology for the length of these remarks, which I trust your Committee will think of sufficient moment to diffuse among the entire body of the Corporation.

‘I remain, Gentlemen, your very obedient humble Servant,

‘CHARLES TOWNSEND, *Medical Officer of Health.*

‘70, Newhall-street, September 20th, 1854.’

I grieve to have to record that the answer given by the Council to this earnest appeal was, not the adoption of the recommendations contained in the Report, but the dismissal of its author by the abolition of his office !

If the language of the Report had attacked individuals, I should have been reluctant to reproduce it here ; and it is due to Mr. Townsend to insert his own comment upon it in a letter to myself, dated January 11, 1856 :—‘ I beg to enclose the last copy of my Report to the Borough Inspection Committee, which I have only this moment laid hands upon. With regard to the figures, I think you may fully rely on their accuracy, but a re-perusal of the pamphlet, which was not intended for other readers than the members of the Committee to whom it is addressed, convinces me that it possesses faults, for which I must claim your indulgence. I perhaps had no right to criticise the conduct of the Council, and may have erred in the excess of my zeal to perform the duties of a most responsible and important office—at which time I imagined that language milder than I then used would probably fail to make any impression on the Council.’

There is no reason for believing that the inhabitants of Birmingham rank below those of other towns in their appreciation of the importance of sanitary measures, and of the necessity for accurate information on which to found them. I fear we must look upon the apathy evinced in this town to be the exponent of the general indisposition to expend money, except with a niggard hand, for objects on which scarcely any outlay could be too large.

It is right also to state that, if we may trust to existing *data*, the rapid increase of mortality, to which Mr. Townsend adverts, must be referred to some temporary cause ; as it would seem, by later accounts, that the rate has fallen back to what it was in 1849. But, although the perils of delay may not be so alarming as they appeared to Mr. Townsend, no man who has examined the subject can doubt that the number of deaths by preventible disease is enormous—that every addition to our towns adds force to those causes already but too powerful, which injure the public health—and that every year calls for more strenuous efforts to contend against our potent and insidious enemy.

I subjoin certain questions which I proposed to Mr. Townsend about the commencement of the year 1856, together with his answers:—

Question 1. Can you state the rate of mortality in Birmingham and its suburbs?

Answer 1. I have no means of ascertaining the positive rate of mortality in Birmingham and its suburbs later than the date of my Report to the Council. Though the Borough has unquestionably participated in the general diminution of mortality which has prevailed throughout the kingdom in the past year, it will as certainly rise again to the high rate of former years.

Q. 2. Whether such rate is on the increase or decrease?

A. 2. My calculations do not extend over a sufficient series of years to determine very precisely what is the exact ratio of increase in our death-rate; but that it is progressively increasing, if we take the last half of any decennial period, particularly in certain parts of the town, I have no manner of doubt.

Q. 3. Will comparison with the neighbouring disconnected parishes tend to show that the cause of a high rate of mortality in Birmingham is confined to Birmingham; or extends to the district in which Birmingham is situated?

A. 3. I believe a careful comparison with the neighbouring disconnected parishes will show that the *cause* of the increased rate of mortality in past years is confined to Birmingham. The rate of mortality in the surrounding districts will probably be found somewhat higher, but not relatively so.

Q. 4. If confined to Birmingham, to what causes should you attribute the high rate? Bad ventilation? Imperfect sewerage? Height above the sea, as regards pulmonary complaints? &c.

A. 4. I attribute the high rate of mortality in Birmingham, in part, to the same causes which influence it in the manufacturing town populations of the midland districts generally, namely, the old, dirty, ill-constructed, and badly-ventilated dwellings of the poor in our courts and alleys, and certain inefficiently-drained localities. To our over-crowded graveyards, numerous offensive trades and others injurious to life, the prejudicial effects of carbon from the non-consumption of smoke from almost countless manufacturing chimneys. To the insufficient supply of water, in many places, as also to the *quality* of the water itself, whether derived from the source which at

present supplies the town, or from private wells, many of which derive their impurities from the leakage or escape of gas, and the percolation of animal matter through the porous subsoil, from the numerous privies, cesspools, dumb-wells, &c. Neither can the temptations to drunkenness, which here exist in such superabundance, be omitted from the list of causes bearing so largely on the health of the town. As regards the elevation of the town above the sea, it is highly probable that this circumstance most favourably influences the mortality by carrying off rapidly the noxious vapours emanating from some of the above-mentioned sources, whatever influence it may exercise in the production of certain diseases of the respiratory organs.

Q. 5. Has the employment of women in manufactories any, and what effect, on the rate of mortality in children?

A. 5. I am greatly impressed with the conviction that the employment of women in factories is productive of a large amount of physical suffering from overcrowding and its usual attendant consequences; but more especially from its influence on the infant mortality of this and other manufacturing towns similarly situated, by reason of the withdrawal of the mother from attention to her children, where in some dirty, ill-ventilated dwelling they are frequently shut up for hours, under circumstances but too surely provocative of disease; whilst the infant, deriving its sustenance at long intervals from the breast, is plied with narcotics to procure sleep and quiet in the mother's absence. The facile manner in which these destructive agents are obtained is much to be regretted, and the pernicious effects of the system much to be deplored.

Q. 6. Has the late improvement in the sewerage been productive of results decidedly beneficial, so marked as to be considered as facts instead of inferences?

A. 6. I do not think any appreciable advantage to the health of Birmingham can be justly attributed to the present plan of deep sewerage; nor is it likely to arise until *house drainage* into the sewers is *generally* adopted, and the present plan of privy accommodation and open cesspools abolished. As yet, the deep sewers serve scarcely more than the old ones for the street drainage rainfall, with a very limited number of water-closets.

Q. 7. Please to enumerate the localities in which disease is accompanied with crime?

A. 7. I am altogether unable to determine as regards the close connexion which undoubtedly exists between crime and disease in very many parts of this borough, which fact depends on the other. Possibly, and I am inclined to think it is so, each often gives rise to the other, but on which side the preponderance lies I know not. Of their co-existence I have no doubt; but I have not given sufficient consideration to this subject to enable me to speak from my own knowledge of more than a few of the principal localities in which they seem chained together. I will instance the few following:—John-street, the Gullet, Slaney-street, Drury-lane, New Inkleys, North-Wood-street, Thomas-street, Lichfield-street, Park-street. Allison-street, Green's Village, Livery-street (part), Stafford-street, Stcelhouse-lane, Brick-street, Old Inkleys, and Cheapside.

There are many others in which disease prevails to a great extent that I am not aware possess a close affinity to crime; more particularly in the district of St. George's, and some parts of the parish of Aston.

Seventeen years of experience as Recorder enable me to corroborate the enumeration given by Mr. Townsend of the seats of the criminal population in the Borough.

The Lodging Houses Act, by thinning the number of lodgers in each house registered, has a tendency to drive the poor in greater numbers to those houses which registration has not reached, either because they are not within the Act, or because their occupants have not complied with its requisitions. It is, indeed, self-evident that if no additional houseroom is provided, the improvement by the lessened numbers in the registered lodging-houses cannot be looked upon with anything like unalloyed satisfaction, when we know that it is bought at the expense of still further overcrowding the class of houses below them.

A few extracts from Mr. Godwin's tract, *London Shadows*, will sufficiently confirm my statement:—

'The following case shows the operation of the Act in this respect:—A widow, very poor, with three children, the eldest ten years of age, is charged 3s. 6d. a week for lodging in a house in 'Short's Gardens,' Drury-lane. This is an amount of weekly rent which it is totally out of the power of this woman,

in her present circumstances, honestly to pay. The lodging-house keeper says that, having known the woman for some years, he has, since his house was licensed, let her and the children sleep there for 3*s.* 6*d.* a week—a sum less than he ought to charge; the ordinary charge would be 4*d.* a night for the mother (2*s.* 4*d.* a week), and half-price for the children (3*s.* 6*d.* a week); in all 5*s.* 10*d.* This is a startling amount of rent, but the lodging-house keeper, as he observed, since he dare not admit more than a certain number of inmates, must charge the amount allowed by law to enable him to live, and at the same time pay his rent and taxes.

‘Immediate and large provision of lodgings is required by the present condition of things, particularly for the very poor who have families of children.

* * * * *

‘In a small room in Rosemary-lane, near the Tower, fourteen adults were sleeping on the floor, without any partition or regard to decency; and in an apartment in Church-lane, St. Giles’s, not fifteen feet square, were *thirty-seven men, women, and children, all huddled-together on the floor.*

* * * * *

‘The house was dirty, dilapidated, and swarming with vermin: this was the condition of two houses after they had been *thinned* by the police. The following is an account of part of a house of ten rooms in this neighbourhood (Rosemary-lane), let to the poor Irish at 1*s.* 8*d.* per week:—One of these rooms, kept by Daniel Jones, contained five beds, as they were called, but which, in fact, were nothing but bundles of rags, similar to those described in Clerkenwell. In ‘Bed’ No. 1, Daniel Jones, the keeper, his wife, and children, aged eight, seven, and five years. ‘Bed’ No. 2, occupied by Cornelius Toomy (paid 6*d.* a week to the keeper), John and Peter Shea, in the same bed, paid 6*d.* each—1*s.* 6*d.* for this bed. ‘Bed’ No. 3, John Sullivan and his wife, paying 7*d.* per week. ‘Bed’ No. 4, Cornelius Haggarty, his wife, boy, thirteen, and girl, eleven, pays 1*s.* per week. ‘Bed’ No. 5, Patrick Kelly and wife, paying 11*d.*; in all fourteen persons in one room; the original rent 1*s.* 6*d.* The keeper received from lodgers 4*s.* per

week. At the time of Sergeant Price's visit (24th of August, 1852) the greater portion of these persons were in a state almost of nudity, huddled in this manner together.

* * * * * *

' Let us look into a house in an adjoining street. This consists of five small rooms, and a back kitchen or washhouse, and is occupied by five families, numbering thirty-three individuals, distributed as follows, viz.:—Seven in the kitchen, which is underground—a man, his wife, and five children; seven in the room over the kitchen—a man, his mother, wife, and four children; in the room behind this are four labourers, who sleep upon two small beds, which fill the room; eight in the top front room—a shoemaker, his wife, and six children; seven in the top back room—six *men and women*, with one child, occupying only two beds. The kitchen is very dirty, has two sinks, both untrapped, communicating with the drain, and contains the waterbutt for the supply of water to the several families. The house itself is filthy, the walls besmeared with dirt, and the yard contains an open cesspool and stagnant water. No wonder that cholera has already been busy in this house.

* * * * * *

' Persons congratulate themselves on the removal of 'rookeries,' and look with complacency at the noble warehouses and streets which rise to occupy the sites of the wretched hovels. But what has been done in this great metropolis to provide for the living creatures who, by the improvements, have had their hearths destroyed? Literally nothing. A short time ago we witnessed the ejectment, from Orchard-place, Portman-square, of nearly fifteen hundred men, women, and children; the place was in a bad condition, and fever was a constant visitor; yet the people were sorry to leave the place, knowing the difficulty of obtaining, with their limited means, a better lodging, or even any lodging at all. Single men could manage well enough, but it was distressing to see the wretched furniture, if so it could be called, and families in the muddy street on a rainy day, the parents hunting in all directions to obtain shelter. These poor people would go, as a matter of course, to the

already thickly crowded parts of Marylebone, St. Pancras, Clerkenwell, &c., for no provision had been made for them of an improved kind.*

It is worthy of remark, that whenever the Legislature attempts to promote the welfare of any class of the community, by means of restraint upon their freedom of action, there is too often a large drawback to be made from the apparent good produced, by reason of the alternatives to which those intended to be favoured are necessarily driven. The following passage from a Report of Mr. Frederic Hill, late Inspector of Prisons for Scotland, affords an instance of the evil caused by Legislative interference:—

‘The following is an extract from a letter I have received from a lady residing in this district [Newcastle], who takes a warm interest in the welfare of the working classes, especially those of her own sex:—

“When Lord Ashley’s Bill first took effect here, it caused a great many females who had previously wrought in the coal-pits, to suffer from the pressure of want (as you are well aware that there is no relief for able-bodied persons by the provisions of the Scottish Poor-law). This bore particularly hard upon widows with young families, of which there are always a great many at all collieries, from the circumstance not only of mining being an unhealthy occupation, but also from the many casualties destructive of life to which colliers are liable. I am happy to say that in this district the distress was less felt than it would otherwise have been, from the fortunate commencement, shortly after Lord Ashley’s Act came into operation, of extensive iron-works in the neighbourhood, which have hitherto given employment to a number of females in the simple occupation of assisting in turning a windlass used in sinking the shafts to get at the ironstone, and also in removing the ironstone from the baskets to the truck provided for carrying it away from the pit-mouth. This is, no doubt, a degrading occupation for women; but you will observe, they do not contravene Lord Ashley’s Act by so working, their employment

* *London Shadows: A Glance at the ‘Homes’ of the Thousands.* By George Godwin, F.R.S. London: Routledge. 1854. Price 1s.

being above ground; and unless they could learn to live, like chameleons, on air, they must and will find the means of evading the most stringent Acts of Parliament which ingenuity can devise.' '*

Another example occurs in one of the Reports of Mr. Senior. He mentions a poor boy who sat in a mine, in the dark, to open and shut a door as the railway trucks, by which the coals were drawn along the driftway to the perpendicular shaft, passed and repassed; and who, on being asked why his parents set him to such an irksome task, answered, that it was because he was too young for admission to the cotton factories!

By the kindness of Sir Richard Mayne I am in possession of documents which show the working of the Lodging-House Act to January, 1856. They are too long to admit of insertion even in abstract. It would seem, however, from the Report of Mr. R. Reason, Chief Inspector, that the over-crowding of inferior houses, to which reference has been made, has been diminished to some extent by the operation of new causes.

'The decrease of the evil of over-crowding is very apparent in all the lowest class of sublet houses, without any known increased burden upon the rates of the several parishes. This may in part arise from an improved rate of wages paid to the poorer class of the Irish population in their own country, which lessens their migration to England, and from the large number of men who have by enlistment, or by employment on works connected with the present war, been withdrawn from the metropolis. The majority of over-crowded rooms were, and now are, occupied by the poor Irish. Many houses have been erected or converted into Model Lodging-Houses for the working classes by societies, &c., but few of these lodgings are cheap enough for the means of the classes who have been found as lodgers in common lodging-houses, or in over-crowded sublet rooms. Upon inquiry, it has been ascertained from the police doing duty in the neighbourhood of the courts and alleys where many of the lowest class of lodging-houses are situate, that since the Act came fully into operation, a visible change has taken place in the habits of the people, drunkenness and gross acts of obscenity having materially lessened.'

* *Eleventh Report of the Inspectors of Prisons.* 1846. p. xviii.

It is quite obvious, however, that a vast increase of house-room for the lower classes of London is much to be desired. Yet, unless it can be furnished on the commercial principle of demand and supply, it would seem almost hopeless to contend with the difficulties of the case. The labours of benevolent societies have as yet done little more than offer models to the observation of capitalists—a most important service no doubt, but only the first step towards the accomplishment of the end in view.

It might be supposed that the high rents exacted by the keepers of lodging-houses would invite competitors into their trade; and it is to be presumed that such an effect is in progress. But there is a fallacy in the use of the term rent to designate the payment made by the lodger, which, when it is understood, will tend to damp the hopes of those who may be sanguine in their expectations that the demand for accommodation will be adequately met by a natural supply. The keeper has to be paid for a most revolting task. His inmates are noisy, quarrelsome, drunken, sometimes ferocious, and often dishonest. And thus a very large proportion of the total payment goes to remunerate him for exposing himself to the perils and discomforts of his vocation; but when this remuneration is subtracted from the payment, the remainder, which alone can be truly denominated rent, shrinks into a comparatively small amount. Yet that amount is the fund to which the capitalist must confine himself, in his estimate of the return to be expected upon an investment in dwellings for the class under consideration.

The late Captain Hay, in his last Report, dated April, 1854, speaks of 'the prevailing habit of intemperance' as absorbing 'those means which could be applied to the payment of the required minimum of decency in human habitations.' Here, then, is the great obstacle. Intemperance is the chief agent in producing that state of manners and morals which enhances the remuneration demanded by keepers; while on the other hand it diminishes the means of payment. How to get rid of intemperance—the impediment which thwarts us at every turn—is the problem to be solved. Into whatever path of benevolence the philanthropist may strike, the Drink-demon starts up before him and blocks his way!

Early in the year 1855 the Mayor of Bristol, Mr. Shaw,

endeavoured to engage the Council of that city to bring the 'Labouring Classes' Lodging Houses Act, 1851,' into operation; but notwithstanding a clear and forcible statement of the advantages to the city likely to accrue from such an undertaking, he was unsuccessful. In the same year, at the instance of Dr. Monk, the late Bishop of Gloucester and Bristol, a Society was formed to accomplish that object. It became a branch of the Metropolitan Association for Improving the Dwellings of the Industrious Classes, and it has now (December, 1856), built thirty-three small houses. These are placed round an airy court in Christmas-street, communicating with a garden which is being prepared for a drying ground. The court, which has more than 6000 square feet of superficies, is paved with flag-stones, and is kept clean at the expense of the Association. There is a convenient washhouse, and pumps with hard and soft water for the use of the tenants, who may require a greater supply than is taken from the Water Company. This Company's Works supply each house with twenty-two gallons *per diem* for household purposes, including the flushing of the water-closet, with which each tenement is furnished. The houses are in three tiers or flats; the communication with the upper tiers being by outside galleries. Each contains a living-room, eleven feet by ten, a bed-room, and a scullery. Some of the houses have two bed-rooms; the rent of the latter is 3*s.* 6*d.* per week; of the former, 3*s.* This sum, which is paid weekly in advance, includes taxes, repairs, painting, water-rates, and indeed every other outgoing. The sanitary arrangements, including ventilation, are excellent. The houses have now been ready for habitation twelve weeks, but as yet they are only half filled, although the average rent through the city of a single room, without any of the advantages enumerated as belonging to the Society's dwellings, is 1*s.* 9*d.* per week; some of the houses so let being in a dilapidated state, and in other respects uncomfortable and unwholesome. The reluctance of the classes for whom these dwellings have been erected to avail themselves of the boon thus offered to them, is believed to be their dread of interference with their liberty of action by rules and regulations. This, however, is a mere prejudice, and is passing away. The Association makes a strict scrutiny into the character of their tenants, as the introduction of a single ill-conducted family

might destroy the comfort of the whole body; especially as the children associate together in the court-yard. Of the financial results, nothing of course can be said at present. The Society contemplates further erections in other quarters of the city.

The recent changes in the law, which authorize the establishment of associations involving only a limited liability on the part of members, render the cost of a Charter, like that referred to in the Charge, unnecessary. It is impossible to revert, without regret and disgust, to the spoliation inflicted on the benevolent persons who founded the admirable Society for Improving the Dwellings of the Industrious Classes.

In the following paper, communicated by a friend (being the summary of a larger work), the suggestions are founded on the duties and responsibilities of house-owners; and it may, therefore, properly be inserted in this place:—

‘ SUMMARY.

‘ 1. That there exists in most, if not all, our large towns, a numerous class of habitual depredators, cheats, forgers, and others, who make crime their ordinary, and, for the most part, their sole occupation, having no dependence for a subsistence except upon the plunder of their fellow-men. Further, that many persons, possessing more or less capital, employ themselves and their means, wholly or partly, in harbouring, trafficking with, or otherwise aiding and abetting, the said class of habitual depredators.

‘ 2. That the evils, moral and economical, inflicted on society by this class are almost incalculable,—the mere expense of repression, imperfect as this is, amounting in London and Middlesex alone to more than half a million sterling per annum, in the shape of Police and County Rates, and allowances from the Consolidated Fund; whilst the value of the property injured and stolen is probably much greater still; and to all this must be added personal injuries, and sometimes the loss of life itself.

‘ 3. That all classes of society, the unhappy criminal class most especially, are deeply interested in the speedy and total suppression of habitual criminality.—The wealthy for the safety of their persons and property.—The honest poor for the safety of their families from that contaminating influence which now

but too often pervades the neighbourhoods in which they are obliged to dwell.—The wretched criminals themselves, that by a salutary compulsion they may be at once and for ever rescued from that fearful network of criminality in which they have become so fatally entangled.

‘4. That the efforts of society to repress and to procure the ultimate extinction of this class, whether by means of religious and moral instruction and training, or by penal legislation, police establishments, and other repressive measures, much as they have undoubtedly accomplished, are still far from having attained a satisfactory success; seeing that thousands still continue to live in open defiance of the law,—cheating, robbing, and sometimes even murdering their fellow-men; their persons, residences, and guilty occupations being for the most part well known, and their absolute number actually increasing in spite of every effort made for their repression. Hence it is surely the part of wisdom (whilst nowise relaxing the vigorous use of the recognised means of repression) cheerfully to accept the aid of any suitable *auxiliary* means that may be pointed out, and shown to be really at our command.

‘5. That children and youths in large numbers (the rising generation of criminals) are well known to be now growing up in habits of dishonesty; being in many cases trained *and actually by force driven to beg and steal* for the support of their idle and profligate parents.

‘6. That no plainer legislative duty,—none that is more imperatively dictated by feelings of humanity, or that can have greater or more obvious moral and economical advantages,—can well be imagined, than that of stepping forth to rescue these most unhappy beings from the deplorable fate of thus being *scourged into crime* in their tender years, with the sure prospect, unless mercifully relieved by death, of ultimately falling into the grasp of the law, *to be then scourged out of crime*;—if indeed this has not, by that time, become so deeply ingrained as to defy the process.

‘7. That to effect the rescue of these miserable children would be to intercept and stop at its source that supply by which the criminal ranks are mainly recruited; and thus, in time, happily to set at rest that most painful and perplexing of questions, ‘how to dispose of our convicts.’

‘ 8. That taking the estimated numbers of the criminal class in a given town (London, for instance), and assuming that the number of crimes they commit amounts upon the average to only one crime per day for each member of the class, the total number of crimes obtained as the result is so enormous as to justify the conclusion, that such total must necessarily constitute an overwhelming majority of the whole number of crimes therein committed. *Ex. gr.*, the predatory class in London is, at the lowest estimate, 5000 persons, who, at the rate given, will commit 5000 crimes a day, or 1,825,000 a year!—a result that would lead one to suppose that no large number of crimes can be assigned to mere casual offenders.

‘ 9. That the common impression that this vast multitude of plunderers consists mostly of *unconnected individuals*, each following his own course of crime without any necessary concert or even concurrence with others, is erroneous; the truth being that (allowing for such restriction as arises from the necessity of concealment), the business of depredation has, and of necessity ever must have, its division of labour, just like any other business; and that those engaged in depredation neither do nor can any more carry on their operations without the concurrent action of others, than persons engaged in honest pursuits. The business of depredation combines the operations, amongst others, of the capitalists (who, finding ready money for stolen property, are virtually the *employers* of the thieves), the trainers of thieves, the burglars’ instrument-makers, the keepers of flash houses, of thieves’ lodging-houses, and of brothels, the coiners, forgers, passers of counterfeit money, illicit distillers, and, lastly, the great body of mere operative criminals, as burglars, thieves, pickpockets, &c. The mutual dependence of the operatives, receivers, trainers, implement-makers, and harbourers, is obvious; nor would it be difficult to show that, without concert or concurrence, habitual criminality must be rare, if not impossible.

‘ 10. That this necessary connexion and mutual dependence of the various kinds of criminals and their abettors makes it proper to regard their collective operations as the working of a single great mechanism, the efficient action of which can only be maintained so long as its various parts continue to move in accordance with each other, each correctly performing the function assigned to it; and therefore, in order to bring such

action to a stand, it will be enough that any one *essential* part of such mechanism be withdrawn or disabled.

‘11. That *the use of premises* adequate to its purposes is an *essential condition of the continued operation of the predatory class*;—so absolutely essential, indeed, that it may be correctly likened to a main wheel of a machine, the withdrawal of which must necessarily disorganize such machine, and stop its action altogether. A predatory class, *utterly destitute of house and home*, must, in a populous district at least, very soon become, like the gipsies, virtually extinct.—Macaulay’s narrative of the instantaneous and easily-effected dispersion (when once fairly set about) of that horde of robbers and cutthroats, who, a century and a half ago, had gathered themselves together in the Sanctuary of Whitefriars, furnishing us with a striking and instructive instance in point.

‘12. That the house property in a town (excepting so far as it may virtually compete with possible suburban extensions) really bears the burden of the rates levied for the repression of crime. For although these rates are collected of the tenants, yet every one knows that a tenant looks simply at the *total amount he has to pay*, not concerning himself what proportion of such total falls to his landlord and what to the tax-collector. The tenant will not go beyond a certain sum in the whole; and therefore the more the *rates* absorb, the less (in the long run) will the *landlord* receive. Indeed, cases were not unknown, under the old Poor-law, in which the rate-collector, took the whole rental, driving the landlord fairly out of the field. Further, a notorious want of security in any neighbourhood is a direct injury to the owners of the property, since it scares away valuable tenants.

‘13. That consequently the existence of a predatory class presses with peculiar severity upon the owners of house property; inflicting upon them the double injury of disheartening acceptable tenants by the fear of violence and robbery, and of intercepting an important fraction of their annual returns in order to meet the expense of magistrates, police, gaols, &c. Hence the owners of house property, *as a body*, have a much greater pecuniary interest in getting rid of the predatory class than any other body of men whatever.

‘And since no landlord need accept any one as a tenant

until satisfied that he is nowise connected with the predatory class, it is clear that if the *body* of landlords were one and all to refuse admission to any one who should fail to satisfy them of his non-complicity with that class, the whole predatory class, together with their aiders and abettors, must become utterly houseless; and unless they at once took to honest courses (an attempt which should receive every encouragement and help), would be left without alternative other than the workhouse or the gaol. And if any large town, being infested by such a class, were to become the sole property of some one man, who, thoroughly understanding his own interest, was determined to protect it by the best means in his power, there can be no doubt that he would at once adopt the most energetic measures for thoroughly clearing his property of a class from whom it was suffering such serious injury. Further, if such a property, instead of thus falling into the hands of one man, should fall into those of a corporate body (also well knowing their interests and resolute to protect them), the result would, doubtless, be the same.

‘14. That the Sutherland Estate in Scotland presents an instance, as regards the offence of smuggling, of the successful application of the principle of making tenancy depend upon abstinence from offence. Complete abstinence from smuggling having been *for these many years, and with perfect success*, made a binding covenant in all the leases granted upon houses and lands adjacent to the sea.

‘15. Although the perfect freedom of our towns from resident plunderers, were it once acquired, could be thenceforward maintained without hardship to any one, yet, as the first expulsion of the predatory class must necessarily dislodge and render homeless a large number of individuals, and thereby cause a great though temporary pressure upon the workhouse system, some temporary expedient will probably be required to meet such pressure, as has been found necessary during the visitations of cholera.

‘16. That thus to deprive the predatory class of harbourage (upon the withdrawal of which they must thenceforth necessarily cease to infest our towns), is not only a subject of deep importance to the interests of the great body of house proprietors, but also a matter of plain and obvious duty to every

individual proprietor. For surely no man has a right to allow his property to become in effect the *accomplice* of crime, he receiving a portion of its proceeds as rent. Enjoying his property under the shadow of the law, how can he be justified in suffering it to shelter those by whom the law is broken and defied?

‘17. That however earnestly the large majority of the house proprietors, when rightly understanding their interests in this matter, may desire to protect them (and with their own, the public interests also), they are without the necessary means of doing so, since they have not the requisite legal power to bind the careless or unprincipled minority, through whose default the whole mischief is let in upon them.

‘18. That since, but for such default, the predatory class must be speedily extinguished, and the heavy expense of their repression become thenceforth needless, it would be nothing more than a simple act of justice *to throw the whole weight of such expense upon such defaulters, so long as they voluntarily remain in default.* And it would be as politic as it is just; since the pressure of such a burden must very soon constrain such delinquents to yield obedience to the dictates of justice, and to pay due attention to the common interest.

‘Therefore, to discover and to apply the means of concentrating the whole expense incurred in the repression of crime, upon the shoulders of those, but for whose default such expense might cease, would, in effect, be *to discover and apply the means of totally extinguishing the predatory class, together with their aiders and abettors*; in other words, to accomplish the object in view.

‘19. That since all house property is now subject to the Police and County Rates, one mode of carrying out the principle in question (and, for the reasons hereafter stated, probably the best mode), would be to provide means by Act of Parliament for *exempting* from so much of these rates as may be required exclusively for the repression of crime all property concerning which reasonable proof can be furnished that it is not now (nor for a given time back has been) tenanted by any one connected, whether directly or indirectly, with the practice of crime.

‘20. That the plan of making exemption a privilege, instead of making the payment of the rates a punishment, is greatly to

be preferred,—1st, because exemption is the most natural step from the present state of things, under which every one pays; and 2ndly, because it would impose the task of making out the case *upon the party who must needs be best acquainted with the facts*, viz., the applicant himself; the good effect of which would be to render unavailing those manifold equivocations, refusals to answer pertinent questions, falsifications of names and dates, pleas of ‘*non mi recordo*,’ &c., by which the cunning are but too often enabled to evade a direct accusation, even when the case is too clear to admit of any moral doubt. For the least reluctance to afford the information asked for, or the smallest attempt at double dealing,—things which would be but little noticed in a case where conviction and punishment were impending,—would be quite enough to ensure the refusal of a privilege; or, at least, to induce its postponement, until the arbiter could become better satisfied of the propriety of granting it.

‘21. That since no dwelling, however great or however humble, can be either concealed or protected from the inroads of the rate-collector, and since, to every place he reaches, he must necessarily convey the influence of the principle, in its full, unbroken force, it would follow that those places (the ‘Hells’ amongst others) which have hitherto been the shame and reproach of the law,—scorning its threats and foiling its attacks,—must speedily succumb under the accumulating burden which the operation of the new principle would inevitably bring down upon them.

‘22. That with an object before us of such unspeakable importance, both morally and economically, as the suppression of the whole body of *habitual* depredators (the expenses and losses inflicted by whom cannot be less in the aggregate than several millions per annum), no ordinary difficulties, nothing indeed short of impossibilities, ought to bar our way. And since experience ever shows that the *impossibilities* of the timid, the feeble, and the resourceless, are often nothing more than the healthfully stimulating *difficulties* of the energetic, the persevering, and the ready-minded, it would surely be the part of wisdom, in order to insure success in carrying the principle into effect, to secure the services, in devising and working out the necessary measures, of men well known to combine such

qualities with sound practical knowledge in the highest degree.—A plan adopted with such eminent success in the case of the Common Law Procedure Act.

‘ 23. That in order to avoid opposition,—to give a reasonable choice,—and that too much may not have to be done at once,—it might be advisable to make the adoption of the proposed Act (like that of some existing Acts) optional with the several towns and districts ; offering, however, as an encouragement to its early adoption, the help during its initiation of men of experience in the conduct of such affairs ; together with the loan of a moderate sum of money to cover the immediate expenses ; such sum to be repaid by easy instalments out of the future savings.

‘ Many valuable improvements—as, for instance, the reduction of the Rates of Postage, and the repeal of the ‘ Taxes on Knowledge,’ have, in the outset, necessarily presented the unpalatable condition of an important, though perchance temporary, relinquishment of revenue. Other great measures, as the repeal of the Corn Laws, and the Reform of the Municipal Corporations, have necessarily called for the abrogation of long-cherished privileges, clothed with something of the sacredness of vested interests. Again, in the accomplishment of certain great changes, as those brought about by the Poor-law Amendment Act, the Public Health Act, and the Building Act, the creation of new authoritative bodies, armed with highly exceptional powers, has been deemed unavoidable.

‘ No relinquishment of revenue is called for by the plan herein proposed ; but, if successful, it must cause a large saving in our local expenditure. And seeing that few things could act more healthfully upon our general prosperity than the effectual suppression of the predatory class,—the transformation of the thousands of enemies and destroyers who now lurk amongst us, into friends and fellow-workers,—and since an increase of national prosperity invariably tells upon the revenue, it is clear, that if successful, the plan must increase the copiousness of its purest sources. Nor is any surrender of vested interests asked for, since no one can pretend to a vested interest in the promotion of crime. Nor is exceptional authority wanted, the decisions required being altogether of a judicial nature.’

CHARGE OF SEPTEMBER, 1854.

From the 'Midland Counties Herald.'

'BOROUGH SESSIONS.

'A SESSIONS of the Peace for this Borough was held at the Public Office, Moor-street, on Monday last, before the Recorder, who was accompanied on the Bench by the Mayor and the Hon. and Rev. Grantham M. Yorke. Lady Noel Byron was present during the delivery of the Charge.'

GENTLEMEN OF THE GRAND JURY,—

ONE of the duties of our local courts in early times, was to promulgate new statutes to the people collected in these assemblies; and prior to the invention of printing, such a usage, it will be conceded, was founded on imperative necessity; unless the laws were to remain altogether, what in truth they have too much remained, a sealed book to the body of the nation. Customs, when harmless, are often valuable possessions; and may frequently be turned to good account, even when the causes from which their origin is derived have passed away. But the usage of which I am speaking, to be made practicable in the present age, must be greatly qualified. Every Session of Parliament produces a whole volume of public statutes of general operation, to say nothing of a huge mass of local and private Acts. We are driven, then, to a narrow selection; and probably you will agree with me, that our choice ought to rest upon such only as call into action some new principle affecting large classes of our fellow-subjects. And perhaps you will further agree with me in thinking that if the changes which have been thus wrought in the law touch the administration of criminal justice, they will possess an additional claim to our attention in this place. In exercising the duty of selection, no particular regard can be had to that fleeting excitement indicated by the multiplicity of speeches, or the warmth of debate, which may have ushered the new measure into the world. For while questions of temporary interest,

but of no real moment, often absorb attention both in and out of Parliament, the Legislature not unfrequently passes Acts with little discussion in either House, and with less observation by the public, whose effects on society are nevertheless as deep and permanent, as the jarrings which fill the columns of the newspaper are trifling and evanescent.

Lasting and progressive will, I trust, be the action of the statute, entitled 'The Youthful Offenders Act,' to which I now respectfully invite your attention. During many years, as some, if not all of you, can testify of your own knowledge, the doctrine that reformatory treatment of criminals ought to be substituted for retributive punishment, was often impressed on the public mind; and latterly, by the aid of the public itself, it has been urged on the attention of the Government and of the Legislature.

Neither the fact of such a pressure, nor the arguments by which it was justified, need be dwelt upon in this town, which has been chosen as the scene of two most important Conferences, of whose debates and resolutions the statute which I hold in my hand may justly be considered the fruit.

After many struggles and disappointments, and much delay, this all-important principle, so far as it applies to the young, has at length obtained the solemn recognition of the greatest Legislature on earth; and is henceforward withdrawn from the troubled regions of controversy, to take its place among established and undeniable truths. And, so far as relief can be given by the provisions of an Act of Parliament, judges and magistrates are now relieved from the odious necessity of exposing children to treatment at once revolting to humanity, and condemned by experience, as inevitably leading to consequences the very opposite of those which its administrators had vainly contemplated.

Gentlemen, it is not an easy thing to fix upon that class of the community which ought most to rejoice over this revolution. The mind naturally turns first to the poor children themselves, the objects of the new enactments. But, if language did not fail me, I would ask to speak for the ministers of justice; and I would attempt to convey to your minds a due appreciation of the boon conferred upon us, in our release from the odious task of inflicting pain, to be followed, not by good but by evil. What, Gentlemen, is the waste of gold, or of

precious stones, or of any earthly treasures, compared to the waste of human suffering? If it savour of presumption for erring man, deliberately and by law, to inflict pain upon his brother (as it assuredly would do were it not justified by absolute necessity), how awful is the duty cast upon him to look well to the consequences of such infliction, and to abstain from any unprofitable exercise of this fearful prerogative, as he would abstain from self-destruction! Can we, then, who preside in courts like this, be too grateful that we are no longer to be the agents of these absurd and cruel visitations?

Nor, Gentlemen, while congratulating myself upon what has been gained, can I repress the desire to look upon the position we have reached, more as an earnest of further progress than as a place of rest. Providence has endowed children with a potent influence upon our sympathies, but as they advance to manhood the talisman drops from their hands. As then public opinion is more easily won over when approached by sentiment than by argument, it was wise on the part of the philanthropist to put into the front of the battle the cause of the young, and to keep back that of the adult until vantage-ground had been secured. That the treatment of children must differ from the treatment of men is obvious, whether the children and the men are at large or under legal coercion. But as regards the propriety of applying the same principles of punishment to each class, no valid distinction between the two can be established. The solid foundation on which the claims of the young to reformatory treatment must be based, is that it has been proved to be advantageous, not merely to youthful offenders, but to the community at large—not to a part only, but to the whole. Yet this ground being once conceded to the young, it will be found, on examination, to support the claims of the adult to similar treatment.

That greater difficulties will have to be surmounted, and that the incurable will constitute a larger proportion in the latter class than in the former, may be admitted. Yet these admissions can safely be made without at all disturbing the general conclusion; which is, that, as to both classes, reformatory discipline ought to be regarded as the rule; leaving the exceptions to be dealt with as best they may. But the claim of the adult portion of the offending classes, even upon our sympathy, will be strongly felt by all whose charity can be awakened by reflec-

tion, and is not altogether dependent on outward impressions or instinctive impulse. The little outcast of tender years, standing at a criminal bar, over which he can scarcely lift his eyes, becomes, upon the instant, and without time being given for thought, the object of our compassion. But suppose years to pass away ; suppose him still to remain the creature of ignorance and abandonment ; all this time will evil habit be doing its work ; slowly but surely reducing him to a slavery hopeless of redemption. Let us now suppose the period of life to have arrived when appetites and passions, which had slumbered through his adolescence, awake to urge him on to his ruin, with a force which his unhappy training has deprived him of all power to resist ; even if the desire for better things should still survive. Is such a being, I ask you, Gentlemen, less an object of commiseration to the thoughtful Christian, than the neglected child ? If pity, in minds well regulated, has relation rather to the depth of the misery which calls it forth, than to the aspect—winning or repulsive—which that misery may chance to wear, the neglected and ill-trained man has even a stronger claim on our consideration than belongs to his younger competitor. And if, as it has now been solemnly admitted, the community is bound to take charge of the child, with the intent to reform him, can it be relieved from that responsibility by permitting him to remain in his vicious courses until he grows up a man ? Surely, if by our indifference we have sinned against the youth, so far from expiating our offence we double it, if we persist in our apathy until he is mature in years as well as in crime. I ask you, then, Gentlemen, to give your aid in this good work. Let us, like our brave countrymen and allies, having seized one position, use it to complete our conquest over the whole fortress of error.

The next great principle established by this Act is that the State, while it assumes, as it ought to assume, the parentage of the child, neglected or perverted by those who have brought him into existence, has a right, and is called upon by duty, to prevent the father and the mother from creating for themselves a benefit out of their own misconduct. To this end the Act invests the Court which consigns the child to a Reformatory Institution, with authority to impose a weekly payment for its sustentation on every parent able to contribute to its maintenance. Doubtless, in many instances, this authority will be

inoperative, by reason of the poverty which the parents may have brought on themselves by indulging in vice and indolence; or which may have fallen upon them by some calamity for which they are not responsible. But no pains must be spared to prevent the parent from throwing off a burthen imposed upon him by every law, human and divine, under any pretence, however specious.

The third great principle sanctioned by the Legislature in this Act, is that of voluntary guardianship. In various parts of this country, as in others, earnest and benevolent men and women have already taken upon themselves the duty, hitherto neglected by the State, of reforming juvenile offenders. They began, and they persevered in this noble enterprise under circumstances of all but insuperable difficulty. Their control over their young wards not being recognised by law, they have had to depend upon their power over the hearts of such of these poor, ill-trained, wayward, and rebellious children and youths, as they could persuade to remain under their care and guidance; and when we consider that the end in view is to change the aspirations and the habits of the pupil; to make him hate that which he has loved, and love that which he has hated; to induce him to submit to wholesome control, instead of indulging the caprices of an unbridled will; to become laborious where he had been indolent; and to abstain from all gratifications inconsistent with his position, and consequently not merely from those condemned by religion and morality, but also from such as are too expensive for his narrow means and expectations, or dangerous from their tendency to dissipate his attention from the imperative duty of learning the art of self-support,—we shall feel that these faithful guardians imposed upon themselves a labour which demands for its endurance a philanthropy the purest and the deepest—one perpetually to be urged forward and solaced by Christian zeal and Christian hope.

Remember, Gentlemen, when you estimate their toils, that neglect and ill-usage has sealed up, as it were, all inlets to the confidence and affections of those outcasts; that proffered generosity would excite suspicion; and that the objects of this high benevolence would at first be engaged in casting about to discover sinister motives, hidden, as they believed, under such a display of compassion. True it is that this coldness, after a

time, thaws under the genial warmth of kindness, which the young person finds, by experience, has no motive except the desire for his good. But the conduct of this experiment is not the work of a day ; and it has been consequently found that the hard problem to be solved is, how to retain the recipient of the benefits of good training, until he can be convinced that he is under treatment which has his welfare for its object, unadulterated with any taint of selfish interests. That examples, without number, can be adduced, both at home and abroad, in which these distressing impediments, even under their most aggravated forms, have been surmounted, is now an indisputable fact ; but that the proportion of failures would have been far less, had a power of legal detention been conferred on the managers of private Reformatories, cannot be doubted ; and this power, by the provisions of the Act under review, they will now possess.

Let me, however, pause for a moment, to explain why I do not consider the absence of such power up to the present time as altogether a misfortune. I am of this opinion, because the absence of coercive authority concentrated the aims of experimentalists endowed with the richest gifts, intellectual and spiritual, upon forcing a passage to the human heart, even in its most hardened state ; and of bringing vicious habits and the mutinous will under subjection, with no weapons but those furnished by faith, by charity, and by good sense. The efficiency of these weapons has thus been manifested to an incredulous world, too prone to fly to coercion as the sole expedient ; whereas we have now abundant proof that it should only be called into action as a last resort, and even then employed with reluctance and reserve. And no doubt caution and forbearance will be requisite hereafter, lest too much reliance should be placed on the legal control which the Act supplies. The walls of the gaols have not only kept the bodies of prisoners in durance, but have had a somewhat analogous effect on the intellects of gaolers ; confining them within the narrow routine of a discipline whose only resources are pain of body or of mind. As Reformatories will not be surrounded by walls, the reliance on force never can approach the degree to which it has attained in prisons ; but should force ever come to be regarded as a substitute for an alliance with the will and the affections

of the patient, sound cures will cease to be wrought. For as the discipline of the Reformatory is of no avail unless it fructifies into good conduct in the after-life of the ward, when its restraints and artificial motives are withdrawn, so the object of the conductors must continue to be, first, to make the ward or patient desire to do right, and then to give him habits of industry and self-government which shall enable him to act up to his convictions.

And this brings me to the last, but, in a practical sense, the most important topic of my Charge. The Legislature has now placed Reformatory Schools established by voluntary societies among the recognised institutions of our country, and is ready to bear the expense of the board and instruction of the inmates ; or at least so much of that cost as cannot be exacted from the parents. In furnishing us with these provisions, it has offered us most important facilities to the multiplication of such establishments. And this is all that can be done without infringing on the voluntary principle, which is wisely kept sacred from intrusion.

It will depend, then, upon those who are duly impressed with the obligation which our Christian brotherhood with the poor outcast imposes upon us, whether this noble statute, which breathes the very spirit of our holy religion, shall operate as widely as the necessity for its application is spread ; or whether, by our supineness or by our quailing before the difficulties which always beset a new enterprise, the Act shall remain a dead letter, proving against us that we are of those who know their duty, but fail in performing it ; who set at naught the denunciations which hang over the servant that 'knew his Lord's will, and prepared not himself, neither did according to His will.'

Gentlemen, I have done. I am in no frame of mind to dwell on the few spots which fell upon the Bill in its passage through the Houses of Parliament. These blemishes are not of its essence, nor can they obscure its beauty ; and, believe me, many an eye which has long and anxiously watched for this auspicious dawn, will be too much dimmed by emotion even to discern them. Let me, then, in the words of Milton, express my confidence that

' the ethereal mould,
Incapable of stain, will soon expel
Her mischief, and purge off the baser part
Victorious.'

SEQUEL.

From the 'Quarterly Review,' December, 1855.

‘IN the year 1851 three distinguished leaders of the Reformatory cause—Miss Carpenter,* Mr. M. D. Hill, and Mr. Sydney Turner—invited all persons interested in the matter to meet and discuss it. A Conference was accordingly held at Birmingham in December of that year, the proceedings of which were afterwards printed in the form of a pamphlet, and widely circulated. At this Conference the subject of Reformatory Schools was placed in almost every possible light by the various speakers. Some, like the Rev. W. C. Osborn, Chaplain to the Bath House of Correction, brought forward striking facts to show how the unfortunate children that once enter the criminal class, take up crime as a profession, and ebb and flow into and out of our gaols with periodical regularity; others, like the Rev. J. Clay, Chaplain of Preston Gaol, showed to how great an extent the sins of these children were chargeable on parental neglect, and also to what a large amount society was a loser by juvenile depredations. Mr. Sydney Turner described Red Hill, and gave a sketch of the state of the law bearing on young offenders. Mr. Wolryche Whitmore entered into details as to the system of industrial education successfully pursued in the Union School at Quatt. Mr. Power, the Recorder of Ipswich, gave an interesting account of the exertions of John Ellis, a shoemaker, in a very humble position of life, who had opened a sort of Industrial School in the neighbourhood of the Regent’s Park, and had succeeded in reclaiming several confirmed and expert London thieves, and putting them in the way of obtaining an honest livelihood. The Chairman himself, Mr. M. D. Hill, the

* ‘Miss Carpenter is chiefly known by her books; but she has been a labourer in the field of juvenile reformation for twenty years, and has much practical acquaintance with the condition of the lower classes. She is now managing the Red Lodge School for girls, established by Lady Noel Byron, at Clifton.’

[The above statement is slightly incorrect. Red Lodge is situated in Park Row, Bristol. It was purchased by Lady Noel Byron with the intention that it should be converted to its present use, and is let to Miss Carpenter at a very low rent: she must, however, be regarded as the Founder of the school. *She also suggested the first Conference at Birmingham.]

able Recorder of Birmingham, than whom no one has paid more anxious attention to the whole subject of criminal legislation, clearly laid down the principles upon which all were agreed, and summed up in a convincing manner the evidence which proves both that criminal children are, for the most part, capable of being reformed, and that the cost of their reformation is as nothing when compared with that which is entailed upon society by their maintenance as criminals.

‘These, and many other interesting particulars, were thus for the first time brought under the notice of a great portion of the public. The attendance at the meeting had not been very large, and those who had assembled in the most sanguine frame of mind felt a little disappointed, we believe, at the apparent poverty of the result of their Conference; but they soon found that the publication of their proceedings was to produce effects far beyond their hope.’*

The following resolutions were unanimously adopted at the Conference:—

‘1st. That the present condition and treatment of the ‘perishing and dangerous classes’ of children and juvenile offenders deserve the consideration of every member of a Christian community.

‘2nd. That the means at present available for the reformation of these children have proved totally inadequate to check the spread of juvenile delinquency; *partly* owing to the want of proper Industrial, Correctional, and Reformatory Schools; and *partly* to the want of authority in Magistrates to compel attendance at such Schools.

‘3rd. That the adoption of a somewhat altered and extended course of proceeding, on the part of the Committee of Privy Council, is earnestly to be desired for those children who have not yet made themselves amenable to the law, but who, by reason of the vice, neglect, or extreme poverty of their parents, are not admitted into the existing Day-Schools.

‘4th. That for those children who are not attending any School, and have subjected themselves to police interference, by vagrancy, mendicancy, or petty infringements of the law, legislative enactments are urgently required, in order to aid or

* *Quarterly Review*. December, 1855. pp. 57-8-9.

establish Industrial Feeding Schools, at which the attendance of such Children shall be enforced by Magistrates, and payment made for their maintenance, in the first instance from some public fund, power being given to the public authorities to recover the outlay from the Parents of the Children.

‘5th. That legislative enactments are also required in order to establish Correctional and Reformatory Schools for those Children who have been convicted of felony, or such misdemeanours as involve dishonesty; and to confer on magistrates power to commit Juvenile Offenders to such Schools instead of to Prison.’*

The sixth appointed a Committee, to adopt measures for obtaining the requisite Parliamentary enactments, and for memorializing the Committee of the Privy Council, with a view to the attainment of the objects laid down in the foregoing resolutions. Thus it will be seen that the Conference contemplated preventive as well as reformatory schools. Public attention, however, being mainly absorbed by the desire of saving young offenders brought to the bar from the contamination of a gaol, it was thought advisable for the Committee principally to employ themselves in promoting such a change in the law as would facilitate the establishment of Reformatory Schools.

Chiefly by the exertions of Mr: Adderley, ‘in the year 1852, a Committee of the House of Commons was appointed to take into consideration ‘the present treatment of criminal and destitute juveniles in this country, and what changes are desirable in their present treatment in order to supply industrial training, and to combine reformation with the due correction of juvenile crime.’ The Committee sat during two sessions of Parliament, and in 1853 presented a Report strongly advocating the reformatory system.’†

The conclusions at which this Committee had arrived received effectual support from a second Conference held at Birmingham, in December of the latter year. The increased attendance showed the progress which the question had made in the public mind in the two years which had elapsed since the former Conference. A morning meeting for dis-

* Report of the Proceedings of a Conference on the subject of Preventive and Reformatory Schools, held at Birmingham on the 9th and 10th December, 1851. London: Longmans.

† *Quarterly Review*, p. 59.

cussion was held under the able presidency of Sir John Pakington ; and in the evening of the same day a vast concourse thronged the ample spaces of the Town Hall, and listened with attention and ardent sympathy to appeals from the Earl of Shaftesbury the Chairman, Sir John Pakington, Mr. Adderley, the Rev. John Clay, the Earl of Harrowby, the Recorder, Lord Lyttelton, Mr. Wolryche Whitmore, Mr. R. M. Milnes, Mr. Arthur Kinnaird, the Rev. Sydney Turner, Lord Calthorpe, Mr. Joseph Sturge, and Mr. Morgan, calling on the assembly and the country at large to promote the objects of the Conference.

‘In 1854 an Act was passed (17 and 18 Vict., c. 86) which has placed that [the Reformatory] system upon a recognised basis, by empowering the managers of Reformatory Schools to apply to the Secretary of State for licences, and by authorizing judges and magistrates to commit children under sixteen years of age to such institutions, for periods varying from two to five years ; the managers being free to choose whether they will accept the children consigned to them or not, and being armed with full authority to control them while under their care, and, if necessary, to send them to prison for any attempt to abscond, or for any gross breach of rules. No child is to be sent to a Reformatory School without undergoing a previous imprisonment of at least a fortnight, which may of course be made as much longer as the judge thinks right. A power is taken of charging the parents or guardians with a weekly contribution towards defraying the expense ; and the Treasury is also authorized to assist. The practice, we believe, is for the latter to pay the school managers at the rate of five shillings a week for every child ; the sum assessed upon the parents being levied from them afterwards (if at all) in aid of the Treasury contribution.’*

It may as well be added here, that in the Session of 1856 the Young Offenders Act was amended by a Bill carried through Parliament by Sir Stafford Northcote. In the autumn of the same year the allowance out of the Consolidated Fund made to the managers of Reformatory Schools was raised from 5*s.* per week to 7*s.*

A large number of these establishments have been opened in Great Britain ; and preparations are making in Ireland for

* *Quarterly Review*, p. 59.

adopting the system there, but at present [November, 1856] Irish philanthropists labour under the disadvantage of being without the facilities afforded by the English Acts; which, with suitable alterations, have been extended to Scotland.

In August of that year the National Reformatory Union held its first Provincial meeting at Bristol; Lord Stanley presided. His Inaugural Address, together with twelve papers which were read on that occasion on various branches of reformatory science, are published under the title of *The authorized Report of the First Provincial Meeting of the National Reformatory Union*.* The authors were Miss Mary Carpenter, Lord Brougham, Mr. E. B. Wheatley, Mr. Frederic Hill, Captain Crofton, Mr. Alfred Hill, Mr. Handel Cossham, Mr. Thomas Philpotts, Mr. Brougham, Rev. Sydney Turner, and Sir Stafford Northcote.

The reader, on comparing the speeches at the Birmingham Conferences with the carefully-written papers of Lord Stanley and his coadjutors, will probably arrive at the conclusion that, for conveying ample and exact information, written compositions have a great advantage over spoken addresses. On the other hand, it may be well doubted whether, when the object is to impress an audience and induce them forthwith to act, an oral appeal is not far more efficacious.

In April, 1855, the Sheriff of Warwickshire called a meeting for the establishment of a County Reformatory School, at which the following speech was delivered. It is inserted here because it pursues the topics of the Charge, and because it contains a succinct history of the reformatory movement in Warwickshire:—

From the 'Leamington Spa Courier.'

'M. D. Hill, Esq., Recorder of Birmingham, then addressed the meeting, as follows:—Mr. High Sheriff,—Though neither a magistrate nor a freeholder of Warwickshire, I have been honoured with an invitation to this meeting, and with a request to take part in your proceedings. Sir,—I offer my hearty support to the motion before you. Not only do I feel that the

* London: Cash, Bishopsgate-street. Bristol: Arrowsmith, 29, Clare-street. Price Two Shillings.

establishment of a Reformatory School for this county is greatly to be desired, but I must be permitted to say that it stands before my eyes as an imperative duty on the inhabitants. It is difficult, if not impossible, for me to produce in other minds the deep impressions which, in my own, have been the work of many long years, and of a large experience in the treatment of criminals. My best chance, however, of showing in a clear light the practicability of reformation, and the value of Reformatory Schools in effecting that object, will be to yield myself up to the train of thought which the town where we are assembled, the audience I address, and the object which has called us together, have set in motion; and to recapitulate very briefly the steps by which I arrived at these conclusions. Five-and-thirty years ago I joined the Bar of the Midland Circuit, and became an attendant at the Warwickshire Sessions. At that time the whole judicial business of the county, including that which arises at Birmingham, was transacted at Warwick; with the exception only of such as belonged to Coventry and the small district forming the county of that city. Such being the case, I hardly need say that the docks of the two courts in the neighbouring Hall were, every sessions and every assizes, filled, emptied, and replenished many times in the day, and for many successive days. It is needless, also, to tell you that a young barrister, whose friends were not numerous, and whose pretensions were humble enough, was not so encumbered with briefs but that he had sufficient leisure to observe what was hourly challenging his attention, and to reflect upon the consequences which flowed from the administration of criminal justice as the law then stood. Then, Sir, as now, the great majority of offences were slight in character, and were not visited with heavy punishment; especially at our sessions, over which a tone of great humanity uniformly prevailed, at least, during the fourteen years of my attendance—a fact which those who remember the three Chairmen before whom I practised will have no difficulty in believing. When I joined the Sessions Bar, I found the Court under the presidency of the venerable Wriothlesley Digby, whose clemency was proverbial. His successor was Sir Grey Skipwith. The urbanity of this gentleman made him a universal favourite, even among those who knew him but slightly; while a more intimate acquaintance disclosed the secret of his winning manners, which had their origin in

genuine kindness of heart. The third whom, on quitting the Warwickshire Sessions, I left still presiding as Chairman, was Sir Eardley Wilmot, a very early, zealous, and able supporter of the principles on which the Meeting is this day assembled to act—principles which you, probably, know are inherited by his son, the present Baronet, my excellent friend and neighbour. The feelings of the Chairman and his brother magistrates were in unison, and all prisoners—yes, even poachers!—were dealt with in a merciful spirit. The Court, however, strove to make their sentences efficient as well as humane; and if they succeeded but ill in these praiseworthy attempts, the fault was not theirs—it was in the law which they were bound to administer. Experience came in aid of the promptings of a kindly nature, to disincline them to inflict long imprisonments. They knew but too well that our prisons, as then conducted, were schools—not of reformation, but of depravity; and that the longer the prisoner remained under the tuition which he there received from his companions, the more confirmed he was in a guilty career. The expedient to which they had resort was, to lash the culprit—not with rods, but with sharp words; to assume a severe aspect: as if a countenance which beamed with good nature the moment before and the moment afterwards, could have its permanent characteristic so obscured by a transitory frown, as to impose upon the prisoner! Alas! Sir, he received all this objurgatory eloquence with impatience and inattention. He wanted to know his fate; and when the punishment was announced, it was often so much in contrast with the awful sounds in which it was conveyed, that the effect was almost ludicrous. The lesson was quickly forgotten; as was proved by the speedy re-appearance of the prisoner in the dock, perhaps, even at the next sessions. We, of the bar, recognised our old acquaintances; and if their names were such as to attract attention, as they sometimes did, from their oddity or uncouthness, we knew, when we read over the calendar which we found on our arrival, whom it was we should have the pleasure of meeting. Even at this distance of time I remember lads, with whom I became acquainted by their frequent re-appearance in the court; but, as they may now fill respectable positions in one or other of our Colonies, I will not run the risk of hurting their feelings by mentioning their

names, some of which, however, are too well fixed in my memory ever to be forgotten.

‘ Sir,—The frequent repetition of scenes like those which I have described, could not fail of driving me to reflect upon the great and humiliating contrast between the means employed and the end attained. Let us, for the reasons given by Sterne, take a single case—many such daily passed under my observation. An urchin, with or without a little schooling, but certainly without religious and moral training, is wandering about the streets of Birmingham. Some article attracts his eye, which a shopkeeper has placed outside his door to draw the attention of customers. He carries it off, escapes detection, and repeats his offence, until he is caught at last. Perhaps he knows that he has been doing wrong; perhaps, on the contrary, the applause of bad companions and wicked parents who share his plunder impress him with the belief that he is doing right,—worthily filling his appointed place in society. Again, in the benighted state of his moral perceptions, it may be that he is uncertain as to whether he is doing right or wrong. The goods were in the street, he took them up; and who had taught him to know where *finding* ends, and *stealing* begins? What instruction did he ever receive as to the limits which divide *trover* from *larceny*? Or, Sir—what is more to the purpose—who had cultivated in his soul those fine and noble instincts, which, without giving him time to reason upon what he was about, would have checked him by the unhesitating conviction that he was falling into crime? He then finds himself, after a time of impunity—not unfrequently a long period—grasped by the strong hand of a policeman, conveyed to the station, brought before the presiding constable, thence despatched to the lock-up-house; and in due course he is ushered into the awful presence of the Magistrate. Here, witnesses are examined, their evidence taken down in writing—he is called upon for his defence, which his attorney, if he has one, advises him to reserve for his trial; and he is brought away to Warwick, enjoying perhaps, for the first time, the luxury of travelling in a carriage; he is taken to the County Gaol, and there introduced to a society, who receive him, not as one deserving censure or reproach, but with the feeling of ‘ Hail, fellow, well met!’ After a while comes the trial; and what is the result? It is his first offence; that is to say, his

first detected offence. That circumstance and his youth enable the Court to indulge their sympathies ; and he receives a light sentence, a month or two, or a week or two, no matter which. He is then turned out on the world. If by accident he brought any remnant of religious or moral impressions into gaol, be sure none went forth with him. If he came regretting the loss of his position in the society of the honest and well-disposed, depend upon it the new community of which he has become a member has reconciled him to his lot. Yet, thus morally frail to the last extremity of weakness, he is turned adrift and called upon to make the choice of Hercules. Honest Industry stands on his right, but, alas ! she is perched on an inaccessible rock ; and, moreover, he feels that she must be a very dull companion, even if he could climb up to her ; while the evil genius who personifies a short life and a merry one beckons him from the bottom of an easy slope, a tankard in his hand and a pipe in his mouth.

And this is the object attained by the complicated and expensive machinery of the law ! Here is the result of the labours of policemen, attorneys, counsel, justices, recorders, judges and juries, grand and petit—grand and petit indeed—vast in the means, miserable in the end ! How we are reminded of the verses of Young—

‘ An ocean into mountains rais’d
To waft a feather or to drown a fly !’

Nay, it is worse, for the fly is *not* drowned. He is soon cast upon the shore, dries his wings, buzzes away as troublesome as ever, and what is worse, finds out that he has a sting. His offences become the less tolerable as he grows older ; and, after many trials and many convictions, a penal colony or the gallows is his destination. Sir, I am not here to dispute that five-and-thirty years have made many changes in this picture—changes at which no man rejoices more than myself. But as regards even the youngest criminals, until the last Session of Parliament, the legal principle of retributive punishment was alone recognised ; and hence all your improvements only mitigated, in some slight degree, the evil which I have depicted—it was by no means rooted out.

‘ To return, however, to the magistrates of the Warwickshire Sessions, in whose court I practised. Their kindness and good

sense, let me hasten to say, led them to discard this illusory treatment in the few instances in which opportunity was favourable. Sometimes they ventured, when the prosecutor came before them and humanely consented to receive back his dishonest young servant or apprentice, to consign the youth immediately to his care. On these occasions I have narrowly watched the countenances of the prisoner and his friends, including the prosecutor—his best friend—to enable me to form a conjecture as to whether the experiment was likely to be successful; and the conclusions which I drew from the imperfect evidence at my command were favourable to the plan. But it was tried under many disadvantages. It frequently happened that the evidence of the prosecutor not being required, he remained at home, and in such case his assent could not be obtained. Again, the magistrates had no means of forming an estimate of the prosecutor's respectability but from his appearance; and, if that were against him, they felt, and rightly felt, bound not to entrust the prisoner to his care. But the most serious defect of the plan was that they had no sure means of learning the results of their clemency; except that, in case of failure, it sometimes happened that the prisoner came again before them, but not always, as he might have chosen a field for the exercise of his calling in a district out of their jurisdiction. Being, however, much impressed with the value, or what, with all its drawbacks, I considered to be the value, of this mode of disposing of juvenile prisoners, I determined, when I was appointed Recorder of Birmingham, to try the experiment myself, under circumstances more favourable than those under which the County Magistrates acted; because at Birmingham the master or the parent was at hand, even if not in court; because inquiry could readily be made as to their character; and, above all, because by keeping a register, the failure and success of the plan, in each instance, could be recorded. Aided by the Chief Superintendent of Police, I have had inquiries made, from time to time, as to the conduct of the prisoner; and the result of these inquiries being reduced to writing, I am possessed of all the means necessary for accurately testing the value of such a measure. I hold in my hand an abstract of my register, which dates from the beginning of 1842. The abstract was made after the April Sessions of last year, 1854, and, con-

sequently, extends over the space of twelve years and a quarter. The total number of prisoners during that period consigned to their friends is 417. Of these only 80 are known to have been reconvicted. Of the remainder, 94 bear a respectable character ; many of them retaining this character after long years of probation. Of 143, the best we can say is that they are not known to have been in custody since they were so given up to their friends. 68 could not be found. 15 were given up to friends residing at a distance from Birmingham, and, therefore, the periodical inquiries which have been made as to the others do not apply to them. But as they were taken away from the evil associations of a large town, I consider them placed under very advantageous circumstances for redeeming their character. 17 were dead ; thus making up the total number of 417 of which I have been speaking. These results, I submit, would, of themselves, prove the fact—which, to be sure, has been abundantly proved by a varied experience, both at home and abroad—that the reformation of youthful offenders is far from being so difficult and hopeless as was formerly the prevalent belief,—a belief still entertained by many ; although, as popular opinion is now strongly with us, they are loth to exhibit themselves in the ungracious and invidious light of opponents.

‘ Sir, when considering the hope of reformation which the plan I have adopted holds out, we must never forget that it is in truth but a rude expedient, labouring under one enormous defect. The young person is sent back into the same position exactly as that which he occupied when he fell. He is open to the same temptations,—it is difficult to keep him aloof from the same companions ; and thus, while he is too often exposed to the scorn and reproach of persons whose ill opinion he most dreads, he has the far greater misfortune of being open to the seductions of those whom his former errors have armed with a pernicious influence over his actions. It, however, has one redeeming feature, which is worthy of the most attentive consideration—the young offender is received into the bosom of a family ! And the head of that family is moved to this act of Christian benevolence, by feelings which give no slight guarantee that he will faithfully execute his trust.

‘ Sir, the various dangers and difficulties to which I have

adverted, as impeding the course of the magistrates in making these humane consignments, and the large number of youths for which no family Asylum can be found, may have suggested to them the good and great work which they began nearly forty years ago; by contributions furnished by themselves, and by other benevolent persons influenced by their example. I, of course, refer to their founding the Reformatory Establishment at Stretton-on-Dunsmore; an Institution which has conferred on the magistracy of this county the distinction of being the first of their body throughout the whole country, to turn their feelings of commiseration to good account—to ripen benevolence into beneficence.

‘The history of the School or Refuge at Stretton is very instructive. Its progress in effecting its object was slow but sure. At first the failures exceeded the number of cures; but gradually the balance was turned. I cannot enter into the statistics. The various accounts which I have received do not quite agree; and by the death of that excellent and zealous friend to the Institution, the Rev. Townsend Powell, the Secretary, we have, perhaps, lost the means of verifying the results with sufficient exactitude to justify a reference to figures, without qualifications which would produce a tedious detail; I may, however, say that for many years they were highly satisfactory. The number of successful cases constantly increased, while, of course, the proportion of failures as regularly diminished. Sir, I must deny myself the pleasure of specifying magistrates whom I remember as actively engaged in the management of this Institution; because I cannot mention all, and to select would be invidious. But I am sure the meeting will feel that I could not advert to the labours of the lamented Secretary without a passing tribute of respect—labours well known to me, often brought as I was into communication with him; though perhaps the fact that at his death the Institution languished and soon itself came to an end, affords the most conclusive testimony to his worth. I mourned his loss, and I still deplore its consequences.

‘But, Sir, to-day you are assembled to revive this Institution; not, as I am informed, as it originally stood, but by uniting your project to that which, mainly through the munificence, and what is even better than munificence, the zealous and persevering

exertions of my friend Mr. Adderley, has been already set on foot at Saltley, in the neighbourhood of Birmingham. This will be indeed a consolation for the loss of Stretton; and cordially do I hope that the proposed union will answer the expectations of this most respectable meeting, if it should be your pleasure to adopt it. As I have already addressed you at considerable length, and as I am to be followed by gentlemen who will direct your attention to the school at Saltley with more particularity than it would be proper for me to do (while the question is as yet undecided as to whether you shall establish a Reformatory or not), I will limit myself to a few brief remarks on the principles on which it appears to me these Institutions ought to be founded and conducted.

‘ Sir, it is quite clear that the resources of private benevolence would be inadequate to the maintenance of the juvenile offenders with which our gaols are crowded. Nor would it be right to tax the generous with a burden which ought to be borne by the whole community. If these young creatures must be maintained at the public expense, either in our gaols or by their plunder when at large; if they are indeed the children of the State, as they surely are, the cost of their sustenance and training ought to be borne by the State, and not by individuals. In passing the Juvenile Offenders Act, the Legislature has sanctioned this principle; and it is already, to some extent, carried by the Government into practical effect. I look forward with confidence to the time when that effect shall cease to be partial, and become complete, till when we must not be disheartened, however practice may lag behind acknowledged principle; meantime one advantage of no slight importance results from managers bearing a portion of the cost. It lets in the operation of the voluntary principle under wholesome checks. Contributors who prove the sincerity of their zeal by giving their money, may be well entrusted with the management of these Institutions; subject of course to Government inspection, which I consider no burden or drawback, but a great benefit. Then, Sir, with regard to the tone which should pervade the discipline of these schools. Many who have heard it said that kindness must be the principle of treatment, immediately picture to themselves a system of false and pernicious indulgence; but there are no two qualities more opposed to each other than these. Indulgence of the present

desires, of the evil passions, and of the impatience of labour of the criminal, is not kindness, but rather the worst cruelty. Let the discipline in these schools resemble that exercised by a wise, firm, and Christian father. Let no present ease or pleasure be granted to the lad at the cost of his future welfare. Let his nerves of body and mind be well braced. Let him be armed within and without for the battle of life. But let all be done in a parental spirit. Let no pain be inflicted but that which is essential to produce the change from evil to good—that mighty and arduous revolution. Such a discipline faithfully wrought out must be accompanied, in its early stages, at least, by many a severe struggle of the poor outcast with his former habits and desires; and the pain of mind and body that he will have to suffer from restraint and labour, both new to him, will be amply sufficient to prevent the probation of the Reformatory School acting as an incentive to crime, although it betters the condition of the criminal—a danger to which some, for whose opinions on many subjects I have the highest respect, have feared it liable. Sir, it has been hastily assumed that a benefit must operate as a temptation. But this is not so. The highest conceivable good, immortal happiness, is contemplated by the depraved without more than a listless and idle wish to attain it; while, on the other hand, the most alluring temptations do not draw us towards real benefits, but decoy us into vices which by and by bring us to sorrow. The youth who is hovering on the verge of crime is not tempted to plunge into the abyss by the hope of reaching the toil, the restraints, and the privations of a Reformatory School. Does he desire to go to a place from which all vicious indulgences are banished, where indolence must become industry, where there can be no debauchery, and where his coarse luxuries must be exchanged for a diet which, though wholesome, never pampers his appetite; where the vagrant, accustomed to roam wherever his will may prompt, discovers that he is fixed to one spot, and where his days must, to his thinking, be a perpetual round of austere and slavish observances? But then it is said that all this, though no temptation to him, must be one to his parents. We admit the danger, and we have guarded against it. At our instance the Legislature has adopted the principle of casting the pecuniary burden, or a portion of it, on the parent. The provisions by which this responsibility is to be enforced are, it is

true, very imperfect. Mr. Adderley, however, has undertaken to bring in a Bill to remedy this defect, and it is impossible that the duty could have been confided to better hands. At the same time, I trust the meeting will clearly understand that it is a moral effect which we seek when we fix responsibility upon the parent; and that we are by no means sanguine as to the financial results of this responsibility. Many of the outcasts are orphans. Many the children of persons who, from vice or misfortune, are themselves destitute. But, in these cases, as the poor child subsisted upon what he could pick up in the streets, or obtain from charity, he was in truth no burden upon his parents, if he had any; and, consequently, there was no sinister motive to procure his admission into a Reformatory School. Again, objectors forget that, before the passing of this Act, if a parent were so abandoned as to plunge his child into crime, so soon as the lad found his way to prison the parent was eased altogether of his maintenance. Now, however, if the parent have anything wherewith to pay, he will be called upon to contribute; and if he have nothing, why, then, you know, it has passed into a proverb, that in such cases even the King must lose his own. I shall advert to but one principle more, and that is what I would call the Family principle. The abstract which I have laid before you will enable you to form your own judgment of its power, even when contending with many difficulties. Its value is highly appreciated in those Reformatories which have been most successful. Mettray, in France, is a collection of small communities, in which the essentials of a family are as far as possible combined. So at the *Rauhe Haus*, near Hamburgh; so at Red Hill, the Farm School of the Philanthropic Society. By these sub-divisions the dangers attendant on the aggregation of large numbers are averted, while the advantage of high and skilful superintendence is preserved. Mettray, the most splendid example of reformatory success which the world has yet seen, contains from six to seven hundred young offenders; and surely it must be obvious that a Demetz, a Wichern, a Sidney Turner, or last, not least, a Mary Carpenter—those gifted philanthropists—are not found in sufficient numbers to justify us in confining their tutelage to a few. I would speak as I feel, with respect and admiration, of the smaller establishments, which able and benevolent men, like Mr. Baker, of Hardwicke, have set on

foot on their own responsibility. It is for them to regulate the extent of their own labours. I rejoice in every new Institution of a similar kind ; but, where numbers are to be provided for out of subscriptions which experience tells me it is not easy to keep up, I would venture to suggest that the economy which results from uniting them in one establishment (if you provide for subdivision), is of itself a strong motive not to depart from the precedents which I have cited—Mettray, the *Rauhe Haus*, and Red Hill; the more especially when such a departure enhances the difficulty, already most perplexing, of finding superintendents who have the gifts essential to the performance of their arduous duties.

‘ Sir, I cannot come to an end without asking you and this meeting to unite with me in grateful rejoicings. All here present will have shared that depression of spirit into which the abortive results of our criminal jurisprudence have so often thrown every reflective mind. The worthy magistrates who surround me know how this feeling is embittered, when we have to administer laws in whose beneficial operation we have no confidence. But a good time is coming—nay, is come. The labourers in a good cause, if ever cause were good, among whom it has been my privilege to be enrolled, have proved by indisputable facts that the reformation of offenders, and especially of the young, is not the dream of visionaries ; but a task to which, under Providence, human agency is fully competent. This truth our friends in Parliament have urged on the Legislature, and urged with success. The Youthful Offenders Act, no doubt, is capable of great improvement, but with all its defects it stands—and, please God, shall ever stand—a noble sea-mark to direct the difficult and intricate course of criminal jurisprudence. For myself, Sir, my reward is ample indeed—I have lived to witness this glorious triumph—I am invited to stand this day among the chief men of my native county,—not chief simply in rank and wealth, not chief even merely in talent and knowledge, but chief in that which is better than rank, better than wealth, and better than talent—chief in benevolence, and in the consciousness of the duty which man owes to man. They—themselves ardent and powerful friends of Reformatory enterprise—call upon me to plead the cause of the young outcast before a tribunal which will cordially recognise his claims. His coun-

tenance may be darkened by ignorance—ignorance both of the head and the heart—it may be disfigured by evil passions and unbridled appetites, but you feel, and you will not shrink from avowing, that he is still your brother. You are his keeper, and you will not repudiate your charge; but, like good and faithful servants, execute your sacred trust!

In what follows I have put together such proofs as I had at hand, and which are not furnished elsewhere in the course of this work, of good effects flowing from the establishment of schools, whether Reformatory or Preventive. This, I trust, will hereafter become a task, demanding for its execution much time and space. At present we are in the day of small things.

‘ To the Honorary Secretary of the National Reformatory Union.

‘ Chief Constabulary Office, Newcastle-upon-Tyne, Aug. 16th, 1856.

*‘ SIR,—*As I hold the appointment from the Secretary of State for the Home Department to proceed, under the Acts of Parliament 18 and 19 Vict., c. 87, and 17 and 18 Vict., c. 86, with the view of enforcing parental responsibility in connexion with the children confined in the Reformatory establishments of the north of England, I shall be most happy to supply you with any information which I can give in connexion therewith; and perhaps I may be permitted to say, that I know from my own personal knowledge and observation, that, since parental responsibility has been enforced in the district, under the directions of the Secretary of State, the number of juvenile criminals in the custody of the police have decreased one-half. I know that many of the parents, who heretofore were in the habit of sending their children into the streets for the purposes of stealing, begging, and plunder, have quite discontinued that practice, and several of the children so used and brought up as thieves and mendicants, are now at some of the free schools of the town, others are at work, and thereby obtain an honest livelihood; and, so far as I can ascertain, they seem to be thoroughly altered, and appear likely to become good and honest members of society. I have for my own information conversed with some of the boys so altered, and, during the conversation I had with them, they declared that they derived the greatest happiness and satis-

faction from their change in life. I don't at all doubt the truth of these statements, for their evident improvement and individual circumstances fully bear them out; and I believe them to be really serious in all they say, and truly anxious to become honest and respectable. I attribute in a great measure this salutary change to the effects arising in many respects from the establishment of Reformatory Schools; but I have more particularly found that greater advantages have emanated from those institutions since the parents of the children confined in them have been made to pay contributions to their maintenance, for it appears beyond doubt that the effect of the latter has been to induce the parents of other young criminals to withdraw them from the streets, and, instead of using them for the purposes of crime, they seem to take an interest in their welfare; and I know that many of them are now really anxious to get such employment for their children as will enable them to obtain an honest livelihood; and it is my opinion, that the example thus set to older and more desperate criminals, belonging in many instances to the same family as the juvenile thief, has had the effect of reforming them also, for many of them have left off their course of crime, and are now living by honest labour; the result is, that serious crime has considerably decreased in this district, so much so, that there were only six cases for trial at the recent Assizes, whereas, at the previous Assizes the average number of cases were from 25 to 30, which fact was made the subject of much comment and congratulation by Mr. Justice Willes, the presiding judge; and I have to add, that the six cases embrace all the offences reported to the police since the preceding Assizes, so that the usual distinctions made between committed crime, the proportion of it detected, and the number of offenders brought to justice, cannot be used in estimating the crime of this district for the period referred to.

‘Hoping I will be pardoned for the observations I have ventured to make,

‘I have the honour to be, Sir,

‘Your most obedient humble servant,

‘J. DUNNE, *Chief Constable.*’*

* Authorized Report of the Bristol Conference, p. 29.

‘**ABERDEEN FEEDING SCHOOLS.**

‘The effects of the schools have been most gratifying. The committals to the Aberdeenshire gaols of children under twelve years old were, during the first ten years of the schools, as follows:—

1841	61	1847	27
1842	30	1848	19
1843	63	1849	16
1844	41	1850	22
1845	49	1851	8
1846	28		

‘It will be observed, that in 1843 there was a serious increase in the committals. At this time the first interest taken in the schools had passed away, and the public in general had not yet appreciated their value. The subscriptions had consequently fallen off; owing to this circumstance, admission to the schools was necessarily much restricted, and many destitute children were left unprovided for. The increase in committals therefore is not to be wondered at. In 1854, unfortunately, there was a great increase of juvenile crime in Aberdeen, and a belief was entertained by many persons that the schools had failed; upon examination, however, not only does this belief prove to be unfounded, but the soundness of the principle on which the institutions are based is ascertained. This increase of juvenile crime was not peculiar to Aberdeen; at other manufacturing towns, such as Paisley and Dundee, an increase is observable, though to a less extent. For this, various causes are assigned—an important one is a restriction in the administration of Poor-law relief, which was made about this time. By a printed table which I have received from Aberdeen, I find that in three years ending with 1852, the expenditure for Poor-law relief in that city amounted to 19,930*l.*, and the average number of paupers on the out-door roll to 1762; while in the three years ending with 1855, the expenditure in relief was only 16,525*l.*, and the paupers 1465, although the latter period was one of less prosperity (particularly at Aberdeen, where several of the spinning-mills had stopped), and of dearer food than the former one. This alteration was owing, I am informed, to a refusal of relief to able-bodied women having each not more than one child dependent on them.

‘Another cause of the increase of youthful offenders was the establishment of a class of shops called ‘wee pawns,’ at which

small articles may be easily disposed of. At Aberdeen, indeed, some receivers of stolen goods actually copied the system of the Industrial Schools, took in destitute children, and fed and trained them, but to evil instead of good. However, the main cause of the great increase at Aberdeen was owing to the restriction of admission to the Boys' Schools. On account of the general distress in the town, the subscriptions fell off, and at the same time a large increase in the price of provisions enhanced the expenses of the establishment. In consequence of this, the committee of gentlemen who manage the Boys' Schools, felt themselves constrained to restrict the admission to the most destitute. The committees of ladies who manage the Girls' Schools acted upon a different principle, and the consequence is, that far more girls than boys have, during the last few years, been maintained in the schools. At present there are in all the establishments 202 girls and only 110 boys; now, assuming that there are as many destitute boys as girls in Aberdeen (and the experience of other Scotch towns proves that the boys are more rather than less numerous), it follows that there are 90 destitute boys at large who are probably engaged in vagrancy or crime; and, indeed, this has been found to be the case. Mr. Sheriff Watson informs me that the Superintendent of Police reports 'there has been a great increase of thefts during the year, chiefly by boys of tender years. In the *female* column of thefts there is a *great decrease*, which I attribute *solely* to the Female Industrial Schools.'

'Dividing the last fifteen years into three equal periods, we find that the juvenile committals in them were as follows:—

	1st period.	2nd period.	3rd. period.
Boys	189	188	134
Girls	55	24	9
Total	244	212	143

'The numbers of children under twelve committed for *crime** to the Aberdeen prisons during the last six years were as follows:—

	Males.	Females.	Total.
1849-50	11	5	16
1850-51	14	8	22
1851-52	6	2	8
1852-53	23	1	24
1853-54	24	1	25
1854-55	47	2	49

* The return does not distinguish the sexes of *vagrant* children.

‘It will be observed, that in the last three years there has been a great increase of boy crime, contemporaneously with an almost total absence of girl crime, though formerly the amount of the latter was considerable. Now, since this extraordinary difference coincides in point of time with the fact of full Girls’ Schools and half-empty Boys’ Schools, the inference can hardly be avoided, that the two facts bear the relation of cause and effect, and that so far from the late increase of youthful crime in Aberdeen anywise impairing the soundness of the principles on which the schools are based, it is its strongest confirmation. In moral as in physical science, when the objections to a theory are upon further investigation explained by the theory itself, they become the best evidence of its truth. Indeed, it is proved by the experience not only of Aberdeen, but, as far as I have been able to ascertain, of every town in Scotland in which Industrial Schools have been established, that the number of children in the schools and the number in the gaol, are like the two ends of a scale-beam, as the one rises the other falls, and *vice versa*.’*

The following list of imprisonments of children attending the schools of the Bristol Ragged School Union shows considerable progress in the right direction:—†

Year.	1847	1848	1849	1850	1851	1852	1853	1854	1855
Imprisoned.	12	19	26	9	1	1	0	1	0

Imprisonments } 1st 4 years, 66, averaging 16.5 per year on number of 417 children.
in the . . . }
In subsequent..... 5 „ 3 „ 0.6 „ „ 728 „
Difference 15.9

16.5 : 15.9 : : 100 : 96.36.

‘Thus,’ says Mr. Thornton, ‘it appears that the diminution of the average annual number of children attending our schools imprisoned in the latter period of five years, as compared with the annual average of the previous four years, is 96 per cent.—a striking fact, which is, I think, a manifest proof of the benefit conferred on them by the religious and secular instruction they

* On the Industrial Schools of Scotland, and the working of Dunlop’s Act. By Alfred Hill, Esq., Barrister-at-Law. Authorized Report of the Bristol Conference, p. 95.
† Authorized Report, p. 40.

receive in our schools ; or, at the very least, of the advantages of rescuing them from the temptations of idleness, and from evil companionship and example.*

THE ST. JAMES'S BACK RAGGED SCHOOL, BRISTOL.

‘ The commencement of all Ragged Schools presents nearly the same difficulties and aspects, yet this record by the master is too graphic to be omitted :—‘ I shall never forget,’ he wrote, ‘ that afternoon—only thirteen or fourteen boys present, some swearing, some fighting, some crying, one boy struck another’s head through the window ; I tried to offer up a short prayer, but found it impossible ; the boys, instead of kneeling, began to tumble over one another, and to sing ‘ Jim Crow.’ ’ This school now comprises a juvenile day school for about eighty children ; an infant school for eighty or one hundred ; an evening school for older boys and girls. The afternoon of each day is devoted to the industrial training of both schools, under competent instructors. A playground and playroom are connected with the school, where the children may remain, bringing their dinners to eat during the interval between morning and afternoon school ; there is a bath-house, where the children are bathed in rotation, some each afternoon, also a washing apparatus in the school-room ; the premises are cleaned by the children, under proper superintendence, as a means of industrial training. The houses adjoining the school in the court being the property of one of the committee, security is given that no external injurious influences will be allowed to interfere with the working of it.

* * * * *

‘ In visiting this and other Ragged Schools in the city, a stranger will probably inquire with some scepticism whether these are really children of the class contemplated, so orderly and so clean, though poorly dressed, do most of them appear. Were he to inspect the neighbourhood during holiday time, he would hardly recognise the same children in their ordinary condition ; and if pointed out to him, he would forcibly perceive the benefit such schools were conferring on society, as well as on the children

* Letter, dated 26th March, 1856, to her Majesty’s Inspector of Schools, the Rev. H. W. Bellairs, from Lee Thornton, Esq., Honorary Secretary to the ‘ Society for establishing Educational and Industrial Ragged Schools in Bristol and its Vicinity.’

themselves, by bringing under good influences and habits so large a mass of our juvenile population, who would otherwise be on the road to ruin. Of the positive good effects of this and similar schools in Bristol, it is difficult to speak; there will always be great disappointment, owing to the irregular attendance of the children, and the apathy or bad example of the parents. Yet in numberless instances children may be seen growing up decently, who owe their only training and instruction to the school; young persons are noticed in regular work who, before they attended the Ragged Schools, were vagrants, or even thieves; not unfrequently a visit is paid at the school by a respectable young man, who proves to have been a wild and troublesome scholar of former times. Not the least encouraging instance is that of a wild lad who was the plague of his neighbourhood, and had been twice in prison, but over whom considerable influence had been gained, and who owed all his instruction to this school. After having been for a time at Redhill, through the kindness of the Rev. Sydney Turner, he emigrated to America, and subsequently enlisted in the British service. Having been ordered to India, he is now going on most steadily, is employed by the schoolmaster to help him, and writes regularly to his friends at the St. James's Back School most intelligent and interesting accounts of the country,—the last received speaks of this once wild youth having been appointed as one of the guards of the royal treasury at Lahore. He evinces constant anxiety for his younger brother, who has been brought up from his infancy in the school, and is now a steady carpenter's apprentice,—the efforts made for the elder son having produced on the parents the effect of stimulating them to greater care in the education of the younger one.*

The following extract from an address to the Literary and Scientific Institution of Paulton, in Somersetshire, furnishes a glimpse of the difficulties to be overcome by the conductors of Ragged Schools. That referred to is St. James's Back:—

‘Put a stop to drunkenness, and Ragged Schools would be relieved of nine-tenths of their scholars. A terrible instance of the present state of things among the class of which he (the

* Paper on the Reformatory Institutions in and near Bristol. By Mary Carpenter. Authorized Report, p. 40.

Lecturer) was now speaking came to his knowledge recently. It occurred at a Ragged School in Bristol, in the management of which he and other members of his family took part. One of his daughters was present a few days ago when a little fellow, nine years old, applied to the master for leave to go home. He was asked why he wanted to go home, when he replied 'he must let mammy out,' and on further inquiry it appeared that this poor lad, shortly before coming to school that morning, had found his mother drunk in a public-house; he had contrived to get her home, and then, in order to save her from injury in his absence, he had locked the door of her room, and put the key into his pocket. It was now time, he calculated, for her to have so far recovered from her intoxication as to be set at liberty. The Lecturer besought his hearers to reflect upon this hideous inversion of natural duty, in which the little child became the warder of his loathsome parent. What must be the feelings of the boy towards his mother! What must he himself become with such an example before him!*

St. James's Back, built on the site of an ancient wharf, as the name implies, is one of the least reputable parts of Bristol. Prior to the opening of the school, it was considered dangerous for a policeman, unsupported by a comrade, to enter its precincts. The ladies interested in it, when first they visited their establishment, were encountered by the neighbours with repulsive, and even insulting language: 'Why do you come here? We don't want big folks here to look down upon us. Be off!' The ladies, however, were Christian gentlewomen, showed no resentment, returned courtesy for insolence, proved by their works that they had the good of the poor at heart, and now they find themselves guarded by the respect and attachment of the inhabitants from any approach to ill-treatment. Wherever, in our large towns, a population is found entirely, or mainly, of the lowest class, it would be worth while to establish a school, if only to furnish a reason and a justification, in the eyes of the dwellers, for those who stand higher in the social scale to visit their quarter.

* Lecture by M. D. Hill, Recorder of Birmingham. *Literarium*, December 17th, 1856.

The subjoined table is self-explaining :—

BRISTOL POLICE FORCE.

' Return of Juvenile Offenders, 16 Years of Age and under, Apprehended in Bristol during the following Years.

Years.	Number Apprehended.	Number Committed for Trial.	Summarily Convicted.	Discharged.
1847	1004	69	348	587
1848	775	59	277	439
1849	487	37	166	284
1850	448	38	166	244
1851	422	40	140	242
1852	373	40	114	219
1853	453	33	92	328
1854	449	32	119	298
1855	473	29	155	289
1856	584	18	218	348

' Superintendent's Office, January 6th, 1857.'

Mr. Wheatley, one of the Chairmen of the West Riding Sessions, and the Manager of the West Riding Reformatory School, in a letter to Mr. Baker, of Hardwicke, dated February 28, 1857, says, that going to bed the night before at one o'clock, he was awakened half-an-hour afterwards by the cracking of slates upon his stables, which were on fire; but that the boys fromt he school, who 'worked like Trojans,' got the fire under before the engines came. Mr. Baker cites this instance to show that certain gentlemen of Monmouthshire, who object to the establishment of a Reformatory School in their neighbourhood, may be foregoing an advantage; his own experience at Hardwicke, and the inquiries which he has made regarding every similar school in England, have convinced, him of the harmlessness of such establishments as regards the neighbours.*

* *The Merlin and Silurian*, March 14, 1857.

INTRODUCTION TO CHARGE OF JANUARY, 1855.

IN the summer of 1854 I was, by the kind aid of an American lady, resident in England, placed in communication with Dr. Stone, a Physician, of Boston, in the State of Massachusetts; to whom I am indebted for answers to various queries on the subject of the Maine Law, and its working in the United States.

The extracts from his letter, which will be found below, furnish a sufficient introduction to the following Charge.

‘There is a difference of opinion concerning the working of the [Maine] Law, but its friends generally control the temperance organizations of this State [Massachusetts], and throughout the country. Clergymen, anti-slavery, and total-abstinence men are almost unanimously friendly to the law. Hotel-keepers, liquor-sellers, grocers, apothecaries, and regular drinkers are about as unanimously opposed to it. Moderate drinkers are divided in sentiment. My own opinion can be very briefly expressed. Naturally shrinking with aversion from some of the more stringent portions of the law, in consequence of an early and unrepressed feeling in favour of the largest phase of personal liberty, which includes an opposition to general sumptuary legislation, I looked upon the law, when first enacted in our sister State, with some suspicion. But the statistics exhibiting its remarkable effects in securing the diminution of crime, of intemperance, and of pauperism, early compelled me to waive all my scruples. I therefore believe it to be, in the main, widely beneficent in its operation, at the same time that I regard it to be subject, as is all other human legislation, to such amendment and improvement as the course of time and the wisdom of experience shall best evince to be necessary, in order the better to accomplish its important objects.

‘From time immemorial, persons charged with crime, and whose principles are not firmly fixed, have endeavoured to avoid the consequences thereof, by evasions and subterfuges. As in the past, so it will be in the future, until human nature undergoes transformation. The law in question was early subject to

this criticism. Yet I know not why it should be more properly amenable to it than any other law has been or would be, which has exerted, or which can exert, over the passions and the follies of men an equal control. It is one of the peculiarities of this law—whatever theories drawing a different conclusion we might, in advance, apply to it—that where it has been most efficiently executed, where the greatest results in the suppression of crime and pauperism have been most satisfactorily achieved, it has seized with such strong hold on the hearts of the people, that its popularity has there and then become invincible.

‘ From the best evidences that I can gather concerning the influence of unaided moral measures, the average effects of pledges to total abstinence is, that fifty per cent. adhere for a single year, thirty-three per cent. for five years, and twenty-five per cent. permanently. In procuring the most decisive results from moral suasion, organization into permanent associations has undoubtedly been productive of much good. And the Temperance Societies of the country have, generally, long since given up, as a failure, the early efforts of organization for the sake of *partial* abstinence, and now strenuously advocate total abstinence only.

‘ There can be little doubt that the moral means resorted to, for the purpose of repressing intemperance, have *at once* produced good results, and at the same time have prepared the public mind for compulsory measures.

‘ The opposition of those previously engaged in the traffic, where the law has been thoroughly executed, has been sometimes removed by a very simple process. Many, acting as law-abiding citizens, among the law-loving people, in a law-maintaining State, have at once relinquished their sales, and commenced other occupations. Others have been indicted, and their liquors destroyed. They have resumed business, and the enactment has been again enforced. *Then*, deterred either by the prospect of the loss of means, or the nearer vision of the State-prison, they have transferred their capital into other branches of industry, and thereupon a twofold object induces them to maintain the law: first, their interests are no longer engaged in its infraction; and second, being themselves prevented from violating the law, they are naturally desirous of

prohibiting others from exercising privileges which they do not themselves possess.

‘No considerable class of our citizens maintain that *beneficial results* accrue from the constant use of alcoholic drinks as a beverage. The radical difference between the Temperance men and their opponents, is rather upon the question, ‘Do *injurious results* follow such use?—one class of the community contending for the affirmative, and another class for the negative of the proposition; while the latter class do not generally go so far as to maintain the absolute improvement of the health and strength from such use.

‘As a general rule, in different parts of the country, the *character of the water* exercises a greater ostensible control than the climate [over our habits in the use of wines, &c.]. West of the principal eastern cities, the water is, in many places, either impregnated with lime, discoloured by the soil, or offensive to the taste; and it is the custom of many, seeking an excuse for their luxurious habits, to attribute the cause to the water, rather than to their perverted appetites.

‘To allude to my own experience, allow me to say that, while travelling in different parts of New York State, South Carolina, Kentucky, Missouri and Canada, many of my acquaintances have insisted upon it that it was unhealthy to drink the water of the place, and have therefore strongly urged the use of wines and brandies; but it was observed that, while refusing myself to follow their kind advice, those of my travelling companions who were more fearful, or less scrupulous, were also much more liable to temporary illness than myself.

‘But why, after all the efforts that have been made, does drunkenness, and the crime and pauperism consequent thereon, still continue? The answer is, the law has not yet been carried into complete effect. The cases have not yet been adjudicated before our highest courts. Obstructions have been constantly placed in the way. Great *improvement* of morals has, however, been made.

‘Not many years since, many artisans and employers, such as shoemakers, stage-drivers, &c., were habitually accustomed to drink freely. Now, the practice has much abated, and we even hear of ‘Stage-drivers’ Temperance Conventions,’ and the money formerly devoted to the purchase of liquor is now used

to elevate them into a higher position in society, and to satisfy those wants which that higher position originates.

‘No branch of the Temperance reform has more thoroughly succeeded than that which had reference to public entertainments. It is only, I think, since the time of Mayor Quincy, now [1854] about eight years, that the public dinners of this city [Boston] have been prepared upon a temperance plan. And at this time nearly all the great public festivals and entertainments in this vicinity, at which several hundred people are expected to be present, including the time-honoured Commencement-dinner of Harvard University, are conducted upon temperance principles, no beverage being provided but lemonade, water, and coffee. The transformation of public opinion that would allow of this change, has only been gradually achieved. But its accomplishment has been the result of the expenditure of much labour, time, and money.’

The following extracts bearing upon the operation of the Maine Law may not be considered out of place here. The first occurs early in the very interesting work from which it is quoted. The second is taken from the summary of what the author observed in the United States, with which she concludes the narrative of her tour in America :—

[The author had just arrived by sea at Portland, in Maine.]

‘A polite custom-house officer asked me if I had anything contraband in my trunks, and, on my reply in the negative, they were permitted to pass without even the formality of being uncorded. ‘Enlightened citizens they are truly,’ I thought ; and with a pleasant consciousness of being in a perfectly free country, where every one can do as he pleases, I entered an hotel near the water, and sat down in the ladies’ parlour. I had not tasted food for twenty-five hours, my clothes were cold and wet, a severe cut was on my temple. These circumstances I thought justified me in ringing the bell, and asking for a glass of wine. Visions of the agreeable refreshment which would be produced by the juice of the grape appeared simultaneously with the waiter. I made the request, and he brusquely replied, ‘You can’t have it. It’s contrary to law.’ In my half-drowned and faint condition, the refusal appeared tanta-

mount to positive cruelty, and I remembered that I had come in contact with the celebrated 'Maine Law.' That the inhabitants of the State of Maine are not 'free' was thus placed practically before me at once. Whether they are 'enlightened' I doubted at the same time, but leave the question of the prohibition of fermented liquors to be decided by abler social economists than myself.

'I was hereafter informed that to those who go down stairs and asked to see the 'striped pig,' wine and spirits are produced; that a request to speak with 'dusty Ben' has a like effect; and that on asking for 'Sarsaparilla' at certain stores in the town, the desired stimulant can be obtained. Indeed, it is said that the consumption of this drug is greater in Maine than in all the other States put together. But in justice to this highly respectable State, I must add that the drunkenness which forced this stringent measure upon the Legislature was among the thousands of English and Irish emigrants who annually land at Portland.'*

* * * * *

'The larger portion of the crime committed is done under the influence of spirits; and to impose a check upon their sale, that celebrated enactment, known under the name of the 'Maine Law,' has been placed upon the statute books of several of the States, including the important ones of New York, Maine, Massachusetts, Connecticut, and Nebraska.

'This law prohibits, under heavy penalties, the manufacture or sale of alcoholic liquors. It has been passed in obedience to the will of the people, as declared at the elections; and, though to us its provisions seem somewhat arbitrary, its working has produced very salutary effects.'†

* The 'Englishwoman in America,' p. 90. London: Murray. 1856.

† *Ibid.*, p. 442.

CHARGE OF JANUARY, 1855.

GENTLEMEN OF THE GRAND JURY,

THOSE among you who bear in mind the Charges which I have been delivered from this Bench, on the causes of crime, will naturally ask how it is that the enormous consumption of intoxicating liquors which prevails through the land—a source of crime not only more fertile than any one other, but than all others added together—should have been hitherto passed by ; or only have been brought under notice as incidental to some other topic. Let it not be supposed, Gentlemen, that such an omission has been the result of inadvertence. The subject has occupied my thoughts for years ; strange, indeed, must have been the state of my mind if it had not forced itself on my attention ; since the evil arising from the abuse of intoxicating drinks meets us at every turn. And for myself, I cannot pass an hour in Court without being reminded, by the transactions which are put in evidence before me, of the infinite ramifications of this fatal pest. In truth, almost every form of suffering which is common to any large class of our fellow-creatures, is connected with vicious indulgence in these ensnaring stimulants. Indigence, overwhelming temptation to crime, insanity, bodily disease, and death,—such are the retributive consequences which wait on drunkenness. Individual drunkards may and do escape some portion of this retribution ; the instances, however, are rare indeed, if not fabulous, in which they run a career of intoxication and remain wholly unscathed. But what is the too frequent lot of their families ? At first sight it would strike us as impossible to discover a more unhappy being than the virtuous wife of a drunkard, and the mother of his offspring. Yet, if we turn our eyes towards the children of drunkenness, to little creatures, both of whose parents have become the victims of the tempter, we shall indeed contemplate human nature in its deepest affliction, short of the misery of guilt.

Take the description, Gentlemen, of one who well knew the class of which he was writing,—Samuel Johnson :—

‘Nor does the use of spirits,’ says he, ‘only impoverish the public by lessening the number of useful and laborious hands, but by cutting off those recruits by which its natural and inevitable losses are to be supplied. The use of distilled liquors impairs the fecundity of the human race; and hinders that increase which Providence has ordained for the support of the world. Those women who riot in this poisonous debauchery are quickly disabled from bearing children, by bringing on themselves in a short time all the infirmities and weakness of age; or, what is yet more destructive to general happiness, produce children diseased from their birth by the vices of their parents; children, whose blood is tainted with inveterate and accumulated maladies, for which no cure can be expected, and who, therefore, are an additional burthen to the community; and must be supported through a miserable life by that labour which they cannot share, and must be protected by that community to whose defence they cannot contribute.’

Gentlemen, so long (I may add) as such a family remains in existence, struggling against the wholesome harshness of those natural laws which condemn it to early extinction, it is driven to find its maintenance in crime; and, if not brutified by ignorance, disease, and a guilty life, remorse is added as the culminating stone of this pile of suffering. But I will not pursue the theme for the reason assigned by the great writer whose works I have just quoted. ‘It contains [says he] such a concatenation of enormities, teems with so vast a number of mischiefs, and therefore produces in those minds that attend to its nature, and pursue its consequences, such endless variety of arguments against it, that the memory is perplexed, the imagination crowded, and utterance overburdened. Before any one of its pernicious effects is fully dilated, a thousand others appear. The Hydra still shoots out new heads, and every head vomits out new poison to infect society, and lay the nation desolate.’

But, Gentlemen, imbued as I have been with the deepest concern that intemperance should be so widely spread among us, I have been deterred from entering at large into this topic from my utter inability to point out any legislative measures

which, as it appeared to me, would furnish reasonable hope of subduing by force of law, the enormous evil which we are now contemplating. Law, however, has not been wholly inoperative; and other weapons drawn from the armoury of religion and morals have been launched against the foe with indomitable zeal, and with some effect. So that the state of the country, although bad indeed, compared with what it ought to be, is nevertheless better than it was in the time of Johnson.

To interpose from the Bench in a contest in which the law took such a minor part would, I felt, be passing beyond the widest limits assigned to the duty which I am now performing—a duty, I apprehend, confined to the enforcement of considerations arising out of the law as it is; or to suggestions which have for their object to produce such a tone of public opinion as shall have a tendency, more or less direct, to bring the law into conformity with our convictions of what it ought to be. Any interference by me with the duties of the pulpit would be uncalled for and presumptuous; especially in this town, where your religious ministry is so richly endowed with all the qualities demanded for the conflict in which it is engaged. Nor would I willingly pass by the services of the various Societies, which, under the leadership of earnest and able men, have sought to alarm the consciences of drunkards; and teach those who are yet free from the toils of the enslaver to elude his arts and withstand his temptations.

But since I began to lay this matter to heart, a great change has come upon us. The Legislature is in motion. During the two last Sessions of Parliament Bills have passed into law, by which restraints have been placed, as to one day of the week, on the sale of intoxicating liquors, throughout the whole island. Since the third day of June, it has been unlawful in Scotland to sell, except to travellers, any species of intoxicating liquor on the Sunday. The English Act, which came into operation on the seventh day of August, does not go so far. It only puts a narrower limitation than heretofore existed upon the hours, during which it is lawful to furnish by sale a supply of such beverages. These Acts, and the recommendations of a Committee, of which I shall speak hereafter, pointing to further changes, seem likely, if we may judge from symptoms already visible, to bring two powerful and very

numerous parties into conflict; those who are of opinion that the cause of temperance may be advanced by law, and those who, for whatever reason, and urged by whatever motive, are adverse to such an exercise of legislation. The latter party will probably be composed of various and heterogeneous bodies. The first of such bodies will be naturally formed of the producers and vendors of alcoholic drinks,—brewers, publicans, or licensed victuallers, and the keepers of beer-shops, distillers, wine and spirit merchants, and the keepers of dram-shops. These we may expect to form a corps by no means insignificant even in mere numbers; but far more powerful by its wealth, by its organization, and by the magnitude of its pecuniary interests, which are at stake upon this contest. Another body will be formed out of those who, confiding in moral influences, fear lest these may be weakened by an alliance with coercion. And certainly it must be conceded, that it is only under a happy combination of circumstances, that force and persuasion can be coupled together without conflicting action as the consequence. Then, again, there will be many who will object that such laws are an unjust attack on their personal liberty; and are imposed upon them by those whose superior wealth and station will practically exempt their hands from the fetters in which they are seeking to bind all below them. The last of the bodies, composing the second party to which there is need to advert, is that made up of hard and obstinate drinkers; although, on grounds which I shall by and by lay before you, I believe this division of opponents will not be so numerous as might naturally be anticipated.

That a review of our course of legislation relating to the sale of alcoholic drinks, is not calculated to inspire unlimited confidence in the salutary power of law to restrain the abuse of stimulants, cannot be denied. On the other hand, a careful examination of the various measures adopted by the Legislature, together with the effects produced by them, would disclose so many errors which might have been avoided, that, while the particular statutes cannot be defended, the great question of the policy of legislative interference may perhaps be found to remain undecided. It will also appear that the state of society in which former experiments were tried was so different from that which now exists, and still more from that towards which we are

tending, as very much to weaken the force of any conclusions against the possibility of efficient legal control which history, superficially read, might seem to furnish.

In the year 1729, it so happened that by the defective framing of an Act of Parliament, the ardent spirit, gin, was relieved from taxation. The passion for this liquid poison, which had already attained a fearful height, was thus urged on by a new incitement; and scenes of disgusting profligacy, infinitely repeated, were the result of the unhappy blunder. Seven years were permitted to elapse without any endeavour to stem the tide of excess that swept over the land; when the Legislature suddenly interposed by prohibiting all sales of less quantities than two gallons, except by persons paying fifty pounds per annum for their license, and also paying twenty shillings a gallon on the liquor itself so retailed. This ignorant and rash attempt at prohibition, for such was the object in view, had the most deplorable results. In the seven years during which the Act encumbered the statute-book, the consumption of gin was greater than it had been in the seven years when all control was abandoned. But, Gentlemen, the causes of this failure are not far to seek. The governing orders, small in number, were haughty, devoid of sympathy for their inferiors, ignorant of their ways, and disdainful of their opinions. The lower classes could only exercise the power inherent in numbers, by turbulence leading to insurrections, more than commonly dreaded in those times by reason of the assistance which might thus be given to the great Jacobite party of the nation. If, then, it were an easy thing for the aristocracy to pass at their pleasure laws to curb the populace, it was scarcely less easy for the populace to resist the execution of such laws, and to deprive them of all their intended effect; the more especially in the absence of any body of peace officers, who, either in extent or in discipline, deserved the name of a police. For the execution of this most stringent measure, which declared instant and uncompromising war against habits which the Legislature had fostered by its own supineness, the statute and the Government depended on the vigilance of informers, whose rapacity was awakened by an offer of a large share in the penalties. It was, however, soon found that illicit vendors and their customers were too numerous to be so dealt with. Informers were marked, cruelly maltreated, and, in some cases, murdered

in the streets, none daring to interfere in their behalf. Even the personal safety of the magistrates was endangered; until at length the drunkard reigned supreme over the law and its ministers. How complete was this victory may be gathered from the fact, that, during the seven years of restriction, only two licenses for the sale of spirituous liquors were taken out in England and Wales!

And, Gentlemen, when we calmly consider the law, and the circumstances under which it was passed, we can hardly regret its fate. In those days drunkenness was the prevailing vice of all classes,—in truth, it was not deemed a vice in itself, but was looked upon by the higher orders rather as a privilege attached to wealth and station, which was not to be invaded by those below. And whoever shall read the debates of that period will find that, in the arguments employed against permitting excesses among labouring men, the speakers treated these, their fellow-creatures, very much as we now treat our horses and cattle. Their limbs were required for the toils which enabled the rich to live in luxury, their blood was required to carry on the wars in which the country might be engaged; wars, as we all know, having little relation to the welfare of the people, or little care for any such object. In conformity with such views, the prohibitory Act left this same pernicious liquor, when sold in considerable quantities, almost or altogether untaxed; evincing thereby a very clear intention not to interfere with the vices of any above the level of the meanest in rank. In short, while no measure was ever devised more difficult of execution, so no measure was ever framed in a manner to enlist such a host of passions against it. And, doubtless, it could only have been successful among a people who, to the sensuality and ignorance of the English populace, should have added the slavish obedience of the Russian serf. But whether we deplore this failure or rejoice at it, certainly it will cause no surprise; nor shall we be led to depreciate the power of legislation, exercised in what Shakspeare calls ‘a learned spirit of human dealing,’ by examples presented to us by such botchers in the art of law-making as the Parliament of 1736. One inference we may safely draw from these occurrences, because it will be corroborated by the experience of all history; and it is this,—That laws affecting our daily habits of life can never be enforced, unless they have

the hearty consent of the people at large ; as evinced by the opinions of a majority vastly preponderating in numbers, and in every other element of power, over the dissentients.

The limits of a Charge do not admit of my tracing the history of legal supervision over the traffic in drinks. I must be satisfied with indicating a few salient points.

The experience of a century had shown that although attempts at prohibition had failed, yet that the impediments thrown in the way of the vendors of alcoholic drinks, partly by the imposition of duties on the manufacture or importation of the article, and partly by the system of licenses, had diminished, or at all events kept in check, the consumption of intoxicating liquors. We need, Gentlemen, no statistics to prove to us that the state of the country in 1830 was much better in regard to temperance than it was a century before that period,—an improvement which none will attribute to education who are acquainted with the slow progress which it made during that interval, however it may have aided us since. At the latter date a great change was effected. Complaints had been prevalent that malt liquor was supplied to the labouring class of a quality far from genuine, and in other respects inferior to what ought to be furnished for the price demanded. It was considered that this evil augmented the desire for ardent spirits ; the increased consumption of which article had produced great anxiety, in the minds of all to whom the welfare of this invaluable class was an object of regard. The unsatisfactory state of the beer trade was imputed to monopolies exercised by brewers ; who, as we all know, have by means of large capitals invested in the ownership of public-houses, obtained a control over landlords in the purchase of the article which they vend ; and, it was thought that a free trade in beer would raise its quality, and thus the customer who had been seduced by the insinuating poison of gin would return to his former beverage. Unerring experience has demonstrated the fallacy of these expectations. Malt liquor is no better than it was formerly, and the sale of spirits has increased ; while, on the other hand, the establishment of the beer-shop, which was to check these evils—inoperative to that end—has introduced mischiefs of its own ; and indeed is universally denounced as a curse upon the land. One truth, however, one important truth,

it has thoroughly established, viz., that to increase or diminish the number of places where liquor may be had, is to increase or diminish the quantity of liquor consumed; and the experience of the last few months has satisfied me, that the same rule governs restriction upon the hours of sale. In Scotland, where the whole of Sunday is put under prohibition, the fact is too palpable to be denied, by any inquirer who will carry an unbiassed mind into the investigation. In England, where the prohibition is not so stringent, the effects are less obvious. But yet, after some inquiry, I have encountered nothing which goes to show that the tendency is otherwise than might *à priori* have been expected.

Gentlemen, we have thus made the discovery, or rather the truth has been forced upon our attention, that the traffic in alcoholic drinks obeys that great law of political economy which regulates all other commerce; viz., that any interference with the free action of manufacturer, importer, vendor, or purchaser, diminishes consumption. Whether the restriction has revenue for its object, as in the imposition of duties, or whether it has morals and good order for its purpose, as in regulations respecting the number of vendors, and the hours during which they may exercise their vocation, still the effect is found to be the same,—diminution of the quantity consumed. But the restrictions must not only be imposed by the Legislature, they must be carried into effect by the ministers of the Law; and that they should be efficient, they must not be opposed by a dominant public opinion. The history of the struggle in the early part of the last century, puts, as I have already said, that truth beyond a doubt. Yet, even where, through the agency of a better organized police, opposition by open force would be unsuccessful, failure might still arise from evasion. In short, from whatever point of view we regard the subject, we shall see that our hopes of improvement have no solid foundation, except in the enlightened sentiment of the people. And we are to remember that evasion, practised as it would be, if practised at all, by large masses of the community, would bring in its train a host of evils arising out of a systematic contempt of the law. Neither are we to forget that to find the means of evasion and to establish its habitual practice are an affair of time; and that restrictive laws, which may be enforced while of recent enactment, will be eluded

when the requisite knowledge has been diffused, and the requisite machinery supplied, for setting them at defiance. Doubtless no probable amount of evasion could bring up the consumption to what it would be if the trade were free; but no diminution attainable in the face of such a sinister influence would compensate for the mischiefs which would thus be incidentally produced.

So far, Gentlemen, I have walked by the light of history; but I am now called upon to consider the recommendations of the Committee on Public-Houses, which sat during the two last Sessions of Parliament. That the labours of these gentlemen are highly valuable, that some of their suggestions will approve themselves to all candid men, and that whoever differs from any of them is bound to a most careful examination of the points of such difference, cannot be denied. Such examination I have made; and I must not shrink from stating that I entirely dissent from one of their most important conclusions, which is, that the sale of all intoxicating liquors ought to be made free; the limitation upon this freedom being, that the vendor must be a person of good character, and must pay a high price for his license. Practically speaking, the only impediment to the sale of liquor would be the duty upon the license, added to the duty paid by the importer or the manufacturer. Now, it may be that the free-trade ingredient of the new rule will overpower the effect of the new fiscal restriction; or, it may be that the new fiscal restriction will be too strong for the free-trade portion; in other words, the restriction created by the imposition of a new duty, which would have a tendency to raise the price of the article, might diminish consumption in a greater degree than would be countervailed by annulling the limitation on the establishment of public-houses: or, on the other hand, the power of multiplying public-houses might increase the sale so as to overbalance the effect of the new duty. Gentlemen, I must confess myself unable to find the data on which the Committee resolved this question in their own minds; nor can I be quite sure that they arrived at their conclusion upon any consideration of it at all. It appears to me possible that their thoughts were distracted by the introduction of another element into their decision, calculated, as I think, to lead them astray. Gentlemen, from various portions of the evidence, I am led to believe that the free-trade principle was contemplated as likely

to check adulteration, and that such contemplated effect was a principal motive for introducing it. Now, on this topic I have two observations to make. The first is, that the public evil of adulteration in alcoholic liquors has been over-estimated; since, for the most part, the ingredients appear from the investigations of the Committee to be innoxious, as where water is used, which it is to a large extent; or if not entirely innoxious, yet less deleterious than the alcohol which they displace; and even in those instances in which they are more injurious, the proportion of adulterating matter appears to be very minute. I may add, that if any drinkers are alarmed or disgusted by the adulteration of liquor, and so led to abstain, it would not be very easy to deduce a public misfortune from such a fact, however severely we may condemn the dishonesty of the trader. But admitting that the adulteration of intoxicating liquors is an evil against which it is wise to legislate (a proposition which I am not about to dispute), upon what ground is it to be inferred that free trade will correct that evil? Free trade introduces competition,—competition lowers price universally; but its effect on quality is far more limited. Where differences of quality are very apparent, some such consequence may be produced; but where the detection requires knowledge and skill, the experience of every day shows that it is beyond the competence of free trade to ensure the supply of a genuine article. In this very town, a most important Conference has been held, with a view of obtaining legal provisions for ensuring that articles of food and medicine shall be supplied only in a genuine state,—articles which it is notorious have been for years adulterated in every possible manner; and yet their manufacture and sale is, and has been, subject to no restraint. Concurring, therefore, in the recommendation for a high duty upon licenses, I can see no sufficient ground for throwing the trade open. Gentlemen, I am very suspicious of free trade. I know too well its potency in stimulating the demand for any article which comes under its influence; and when, therefore, I desire to see that demand languid and attenuated, I much prefer the reverse principle, protection, or as we should call it, restraint. I desire then to retain the discretionary power of the magistrates, which it is much easier to keep now that we have it, than it will be to restore when once abandoned; and before I conclude, I shall

submit facts to your notice, drawn from the experience of another country, which may lead you to think it probable that the restraining power of the magistracy over the sale of drinks, may be in future more efficiently exercised than heretofore.

Gentlemen, from what has already fallen from my lips it will be evident, that while I regard existing restrictions as too valuable to be relinquished, I have no very sanguine expectations that any great or striking results will follow from mere regulations. A few years ago I should have ventured upon a bolder proposition. I should have held that it was beyond the art of man to frame a restrictive law which should be very efficient in lessening consumption ; and even supposing a great effect could be produced, I should have had but little hope that the good would be purchased, except at the price of a more than countervailing amount of evil. But since that period a momentous experiment, on a vast scale, has been in trial across the Atlantic. In the year 1851, Maine, one of the States of the Republic of North America, enacted a law entirely prohibiting the sale of intoxicating liquors. This law, with some modifications, has been adopted in six of the other States. Nor is that all, for the State of New York, the most powerful member of the Union, is, after a protracted struggle, on the eve of coming under the dominion of the Maine Law. Already has the measure passed both the Senate and the House of Representatives of this great community, called, from its pre-eminence, the Empire State. The late Governor put his *veto* upon the Bill, and prevented it from becoming law ; but he has been replaced by another Governor, chosen expressly on the ground that he is a supporter of the measure. Gentlemen, I have carefully investigated, by all the means open to me, the progress and operation of this extraordinary movement. I have read all the printed documents which I could procure on the subject. I have sought interviews with intelligent and well-informed Americans, some of them of high position. I have corresponded with persons in the United States, who have been kind enough to aid my inquiries. To say that I have arrived at conclusions free from doubt, on all the questions involved in the enactment of a Maine Law, would be far from true. But I have satisfied myself that the Maine Law is a reality,—that it has wrought great effects in many cities and large districts,—

that it has had very decided success in diminishing pauperism, and in emptying prisons,—that no countervailing evils have as yet sprung up to any alarming extent,—that no State where it has been once adopted has abandoned the measure, and that it is destined to make progress, if not throughout the whole Union, at least over a very considerable portion of. I may add, that it has received a favourable reception in the Legislature of our own Province, Canada. These matters being, as I believe, indisputable, I was led to inquire how such marvels had become possible. And this is the explanation. Five-and-twenty years ago the scourge of drink was intolerable,—all classes appear to have been sufferers ; and hence it was in America that Societies arose for the promotion of temperance, by enforcing on the minds of men the disastrous consequences of indulgence, and by administering pledges to abstain. The labours of these institutions spread abroad an earnest desire to lessen, and even to extinguish, the consumption of intoxicating drinks ; and the vendors being, as in England, subject to a licensing system, when public opinion had in any district pronounced strongly against the traffic in these beverages, the authorities (themselves elective officers) refused to grant any new licenses, and eventually even to renew those in operation ; until in various places, beginning where the sentiment was strongest, no liquor could be retailed without a breach of the law.

Thus, Gentlemen, you will observe that the change was not suddenly made, but that the policy which now prevails rose up gradually, and gathered strength by degrees ; so that when the Maine Law came into the Union, it was no great shock to the habits of the people. I hardly need inform you that in the United States every law must of necessity be popular, at least in its institution ; as otherwise it could not pass a popular Legislature, nor would it receive the sanction of a Governor popularly elected. Indeed, a very extensive popularity will alone account for the existence of this measure, and for its now being maintained after trial. And, Gentlemen, it is impossible to contemplate the astonishing fact, that it has come into existence, and that it has spread from State to State, without our being led to inquire how, in a country in which drinking habits had widely prevailed, and where the people themselves are their own law-makers, the general good-will could have been gained towards a

coercive law such as no despot has ever dared to contemplate,—a restriction on personal liberty, which, I must own, I should have predicted would be so opposed to American instincts (at all events as regards the actions of *white* men) as must have rendered any such enactment a political impossibility.

Gentlemen, this is the solution. At all times, and in all countries, one half the human race will gladly support a measure which gives hope of rescuing their husbands, their brothers, and their sons from the tyranny of liquor. I do not stay to estimate the necessary deduction for the number of women enslaved by the same habit. Some deduction, however, must unhappily be made; and yet it does not follow that the cause of temperance will lose the good wishes even of those unhappy beings who have degraded their sex by becoming drunkards. For it must be remembered that even drunkards, whether male or female, in the hours of sobriety may hate their vice, bitterly feel their humiliation and enthrallment, and ardently desire to be protected from their own infirmity of purpose. Thus, Gentlemen, we see how intemperance itself may furnish a large class of earnest advocates for a measure of coercion; and this fact, united to other considerations, may diminish our astonishment at the existence and spread of the Maine Law, and our incredulity with regard to its alleged success. It is true of the laws of all nations, that their satisfactory working very much depends upon whether they are in harmony or in discord with public sentiment. But this is emphatically true of the laws in the United States, and most emphatically true of one which hourly interferes with the routine of ordinary life. In districts where the stream of public opinion does not flow in the direction of the Maine Law, or where it moves but slowly, the law is very much a dead letter; while, on the other hand, even in States which the Maine Law has not yet reached, there are districts where the sale of intoxicating drinks is so generally condemned, that no vendor is willing to brave the odium attendant on such a traffic. The Maine Law is then altogether the creature of popularity. Unless there had been in its favour a large majority of whatever State has adopted it, such an enactment would never have found its way into the statute-book; and unless its supporters are thoroughly diffused throughout the adopting community, it will receive only a partial enforcement. So deeply are the

American Legislatures penetrated with the belief that an overwhelming majority is required to support a law which thus materially interferes with personal habits, that the practice has arisen among them of calling on their constituents to meet at the poll, and give a vote of adhesion to the measure before they will pass a Maine Law Bill.

Gentlemen, this review of the circumstances under which a Maine Law, instead of remaining the dream of some benevolent visionary, has become a practical truth in the Western hemisphere, will, I apprehend, also show that the time is far distant, if it can ever arrive, when such a measure will be adopted at home. Voluntary Societies have not produced the abiding effect among us which they appear to have done in America. To one indication I may advert as showing the permanent hold which the principle of abstinence has obtained throughout the Union. It is, I am informed, held disreputable, even in States which have not adopted the Maine Law, for a clergyman to touch an alcoholic beverage of any kind. Public opinion then is feeble here as compared with its action in the United States, and its progress is but slow and wavering; we therefore cannot be surprised that it has not yet acted, or only slightly acted, upon the licensing bodies: nor that we should find in this country no single district in which the experiment of prohibition has been tried or approached. You will agree with me, Gentlemen, that it will be necessary for those who have taken up the advocacy of a Maine Law in this country, well to consider these facts. It is quite true that they repudiate, and I am sure repudiate with sincerity, the notion of calling on Parliament to force such a law upon the people; but they have not yet succeeded in protecting the popular mind from the fear of coercion; and thus they are in danger of encountering a popular hostility fraught with consequences most perilous to their enterprise. The people will be led to believe that the wealthy and powerful are about to make them abstain by the rigors of an Act of Parliament, which will not affect the enjoyments of the upper classes. It will be said that so long as importation is permitted, the rich man may enjoy his bottle of wine, while the poor man's tankard of ale is put under the ban of the law. The facts of the case raise the same argument in the United States; but the answer of the million in the great Republic would

be,—‘ We have called for this law for our own protection. We look upon it as a shield to guard us from harm—not as a sword to smite us. If the higher classes choose to leave themselves and those who are dear to them open to temptation, so be it: theirs is the fault, and theirs will be the penalty. Our offspring will never pray at night not to be led into temptation, and yet arise in the morning to contend that temptation is a birth-right; and that withholding it from them is an invasion of their liberties.’

But, Gentlemen, you will perceive that the American people have had a long training to this doctrine; and that the democratic form of their government, with all its drawbacks (and they are numerous), assuredly confers one advantage. It becomes impossible for the many to believe that any law can be thrust upon them by the few; on the contrary, they must see that legislative acts are but the formal expression of the popular will.

The chief lesson, then, to be drawn from what has been submitted to your consideration is, that until the sale of alcoholic drinks has fallen into public disfavour—until those who feel themselves and their families exposed to temptations which they may not be able to resist, are willing to submit to privations for the sake of closing the door against the tempter,—and until that smaller class, which feels strong in the power of self-control, is willing to make some sacrifice for the benefit of their weaker neighbours, to enact a Maine Law in England would be only to repeat the fearful error of the last century.

Although something has been done, the public mind is yet incredulous of the indisputable truth, that the utility of alcoholic drinks is far more limited than we have any of us, until lately, been taught to think; while their abuse is far more extensive than can be even imagined by those who have not thoroughly investigated the subject. These two great facts must every day, in season and out of season, be impressed on the English head and heart. And here the labours of the advocates for the Maine Law are, like those of other Societies for the promotion of temperance, working for good, and they deserve our grateful acknowledgments.

But, Gentlemen, it is easy to descry new dangers to be avoided, which may possibly accelerate our speed. From a

combination of causes we are exposed, as a manufacturing people, to an extent and severity of competition to which we have hitherto been strangers. Improvements in navigation, and in other means of transport, have made it competent to all nations to command raw materials whereon to exercise their industry and their skill; while, on the other hand, that superfluity of labour which enabled us to meet any amount of demand without an inordinate rise of price, is now, by the extension of our trade, and of emigration, to say nothing of the war, very much diminished, if not exhausted. It behoves us, then, to economise our stock of labour; and our working men we must hope will, by increasing their individual efficiency, aim at compensating for inadequacy in their numbers,—‘a consummation devoutly to be wished,’ even more for their welfare than for our own; because the profit of such augmented efficiency will, as it ought to do, fall in larger measure to them than to us.

Gentlemen, how deeply the value of a working man, to himself, to his family, and to his employers, is injured by intemperance, some whom I have now the honour to address may probably, in their own manufactories, have but too much reason to know and to deplore; and this injury will, I presume, be more and more keenly felt as we make way in that course of gradual change, long since begun, which, by the extended application of machinery, is constantly substituting for the rude, uncultivated labourer, the trained and skilful artizan.

Birmingham, Gentlemen, is so intimately connected by commerce with the United States of America (soon perhaps to become our chief competitor), that you know, far better than I can tell you, how quick is the progress in that land of the changes to which I have adverted,—and perhaps you would receive it as no extravagant proposition, if I were to affirm that the retention of our manufacturing superiority is absolutely dependent on our ability, by some means or other, to remove from among us the foul reproach of intemperance. That we are an intemperate people, no man, who has honestly given his mind to the subject, can deny. The truth is self-evident, and stares us in the face on every side. Two facts, however, I will lay before you. The cost of stimulants (alcoholic drinks and tobacco) is upwards of fifty millions sterling per annum. Indeed, according to the deliberate opinion of Mr. Clay, the able and

experienced Chaplain of Preston Gaol, than whom no man has more carefully studied the question, the true cost to the British nation is little short of a hundred millions, aggravated as it is by the profits of retailers, and by those fraudulent additions to the price which are the result of adulteration. Again, this enormous expenditure is not to buy strength or lasting welfare; but to purchase disease and debility, poverty and death.

Let me contrast this hideous waste with our outlay in what is good. I learn from the highest authority on the subject, Mr. Charles Knight, that the whole annual sum expended on literature, including newspapers, is no more than five millions sterling; a small fraction indeed of that wealth so much of which is worse than thrown away! Let me earnestly and affectionately entreat the working classes of our town to ponder well this contrast between the cost of poison for the body and food for the mind! In asking for their attention I am addressing myself to thoughtful men, who comprehend all the evils of intemperance. Many of them, I know, offer in their own persons and families bright examples of perfect freedom from this odious vice. I would fain hope I may venture to speak so of the majority; yet of a large minority I grieve to say none but their flatterers can speak thus,—none but their flatterers can say that they have not wilfully so mis-used by excess in drink the prosperity which Providence has vouchsafed to us of late years, as to make it a curse instead of a blessing; for although, thank God, the criminal class is comparatively small, yet in absolute numbers it is enormous, and is constantly fed from the classes who begin their course of error by giving way to drinking habits. Crime, Gentlemen, is the extreme link in the chain of vice forged by intemperance,—the last step in the dark descent—and thousands who stop short of criminality, yet suffer under all the other miseries (and manifold they are), with which the demon Alcohol tortures his victims!

I fear, Gentlemen, my Charge, which has now come to an end, is open to the objection that its views are scarcely settled, and its recommendations by no means definite.

If such a complaint should be made, my justification, or rather excuse, must be, that, although I have spared neither time nor labour of inquiry or of thought, I have not been able

to gain a full mastery over this most difficult and perplexing subject. Nevertheless, if what I have submitted to you shall have furnished useful materials for reflection, I am willing to hope your patience will not have been altogether abused; and that you will pardon my long intrusion on your valuable time.

On Saturday afternoon, when the Grand Jury came to be discharged, Mr. W. E. Hunt said he had, on their part, 'to thank the learned Recorder for the very admirable address which he had delivered the day before. The Jury entirely concurred in that address, and believing it well calculated to promote the object of the Recorder, they hoped that he would allow it to be published and circulated as widely as possible.'

The Recorder said he should take care that the Charge was published forthwith.

A D D E N D U M.

More than one eminent writer having misapprehended the opinions intended to be set forth in this Charge, it is reasonable to presume that some ambiguity, or other want of distinctness, has clouded the expression of the Recorder's views. That he may do his best to guard himself from being misunderstood, he subjoins the following short abstract :—

1st. He desired to show that the consumption of alcoholic beverages is so excessive as to make it of the highest moment that it should be greatly reduced.

2nd. That all schemes for effecting such reduction must, to be efficient, be founded on the desires of a largely preponderating majority of the people.

3rd. That restraint on the sale of intoxicating drinks, when made in conformity with public opinion, diminishes consumption in proportion to the stringency of the law.

4th. That the experience of six of the United States of North America shows that, under similar conditions as to public opinion, such restraint may be tightened into absolute prohibition; and yet remain effective.

5th. That very decided good results have already been pro-

duced in the six States by such prohibition, in diminishing pauperism and crime.

6th. That the progress in America towards a Maine Law had its beginning many years ago; while in England we have scarcely taken our first step in that direction.

7th. That consequently the institution of a Maine Law in this country, must be deferred to a distant future.

8th. That it can only be safely enacted when it shall be demanded by large numbers, who desire to protect themselves against temptation; or desire a similar protection on behalf of their families and those in whose welfare they are immediately interested.

9th. That to such numbers must be added the smaller, but more powerful, body, who, not feeling the necessity for such control, are yet willing to forego their moderate use of alcoholic beverages as the necessary condition of a great national benefit.

10th. The controversy between the advocates of total abstinence and of moderate use, is meant to be left (as a question of health) altogether untouched; the medical authorities being in conflict on that part of the subject.

HEATH HOUSE, STAPLETON, NEAR BRISTOL,
Jan. 23rd, 1855.

[The extracts from Dr. Johnson's Reports of debates in Parliament, it will have been observed, are cited as the language and sentiments of Johnson himself; and, whoever has read Boswell's account of the manner in which these Reports were concocted, will think it very unsafe to ascribe the matter to the speakers from whom it purports to have proceeded.]

SEQUEL.

'Remarks in answer to Objections advanced against a Charge on the Abuse of Intoxicating Liquors, delivered by the Recorder of Birmingham, in January, 1855.

'THIS Charge satisfied neither of the contending parties. The prohibitionists, although they concurred in the principles laid down, were of opinion that the period at which a Maine Law had a chance of being obtained was relegated to a future far

more distant than consisted with the reasonable prospects afforded by a public opinion advancing, as they think, rapidly in that direction. The opponents of prohibition, on the other hand, passed over almost without notice the conditions on which alone I contemplated the possibility of a Maine Law; namely, that it should be demanded by a majority of the people so large as to ensure the smooth working of the measure; and they consequently treated my Charge as if it had been a call for immediate action on the part of the Legislature—an action which, if it should not go the length of prohibiting the traffic, was yet to tighten all the restraints upon it. I therefore think it may be useful to examine the grounds on which the question ought to be discussed, and upon which it must eventually be decided.

‘Inquiry as to the propriety of enacting any proposed law ranges itself under two heads. Is the contemplated object one to be desired? And if so, will the attempt by the proposed law to attain such object yield a balance of good over evil, or of evil over good? Many wrongs must go unredressed, many evils remain without a remedy, because we are not able to frame a law which would not inflict greater wrongs, and produce worse evils, than those against which it is to be directed. Ingratitude is a cruel wrong to the benefactor; and, inasmuch as it weakens the motives to benevolence, is a great evil to the community. Yet who can devise a law for the punishment of ingrates which shall not be a remedy worse than the disease? Again, how cruel are the injuries which the husband can inflict on the wife, or the wife on the husband. Some of these are, it is true, cognizable by law,—not only law as it may be, but law as it is. But others, however exquisite the pain which they cause, are not cognizable at all; and in the Courts which have jurisdiction over conjugal strife a preliminary question often arises, whether the scandal, or, in other words, the injury to public decency which would flow from the inquiry, does not outweigh the benefit to the individual consequent on aiding him or her to obtain the justice which is demanded.

‘Before the principle, thus indicated, can be applied to the present question, several branches of inquiry must be pursued. It is obvious that the first of these branches is that which will enable us to determine the value of the enjoyment which it is

proposed to limit or extinguish, as compared with the amount and intensity of the injury of which indulgence in that enjoyment is the cause. As regards this branch I must rely, for the most part, on the physiologists. I have taken some trouble to inform myself as to the preponderance of opinion entertained by medical men on the subject; and I find the belief among them to be all but universal, that to man in his normal state alcohol imparts no strength; and that its good effects are confined to an exhilaration of the animal spirits; that all good purposes, except this one of exhilaration, may be comprised under the head of medical purposes,—in short, that alcohol in its many forms of ardent spirits, wine, beer, cider, and so forth, neat or diluted, can only be used without injury when required as medicine; unless when taken in very small quantities. As a medicine, alcohol is efficient in a high degree, and to abstract it from the pharmacopœia would be to cripple the curative resources of our physicians to a very serious extent. But physiologists, I believe, will agree that the office of food and that of medicine are essentially distinct, and even repugnant. Aliment supplies the fuel for a species of combustion essential to the maintenance of life. Medicine, on the contrary, is a sort of poison intended to act hostilely against some deleterious substance or influence which has found its way into our bodies; and medicine, as we all know, ceases to be useful, or even harmless, the moment the enemy is overcome. It is one poison counteracting another, and becoming itself injurious as soon as its legitimate functions are at an end. No prohibitionist, I believe, ever went the length of desiring to put any fetters on the discretion of the medical man, whether he give general directions to his patient, or govern his case by a specific prescription; and, therefore, whenever the recipient is acting on medical authority, no law would seek to interfere with him.

‘The only sacrifice, then, which would be demanded, relates to that very moderate use which the majority of physiologists might permit, as not injurious to the constitution; but which, at the same time, they tell us, conduces in the healthy subject neither to the preservation of that health, nor to the increase of strength. The sacrifice demanded, then, by the sternest law of prohibition ever proposed, is simply the pleasure arising from

the exhilarating effect of alcoholic drinks. Now, I do not mean to undervalue this or any other source of enjoyment. I desire to estimate it fairly—I may say liberally. I will put it at the highest amount at which it would be placed by any reflecting person. But let me be permitted to call attention to some considerations which may qualify our estimate of its intrinsic value. Probably it has been found by every one trying the experiment, that the quantity of alcohol imbibed must be very small when it is not followed by consequences, which, although they may not be serious, are yet sufficiently disagreeable to overbalance the enjoyment obtained by the exhilaration produced. Again, it is in the nature of a stimulant gradually to lose a portion of its force, and consequently to require augmentation from time to time; so that although exhilaration may be at first produced by a harmless quantity, to continue the effect that quantity must be increased until it ceases to be harmless. Neither is it quite clear that exhilaration from alcoholic drinks is a real addition to our stock of animal spirits. It may be only drawing upon it; as we draw a cheque upon our banker at the expense of our stock of money remaining in his hands. Persons who abstain altogether from alcohol do not appear, so far as I have observed, to be on the whole less joyous than those who avail themselves of moderate indulgence; while, as compared with those who indulge immoderately, it will be admitted that the abstainers have, in this respect as in all others, the advantage. Voyagers have from time to time discovered whole communities which had never tasted alcohol in any shape; and certainly their descriptions do not lead to the conclusion that the hilarity of these primitive tribes had suffered from their privation. We must, however, in taking our account add to the loss of the enjoyment—whatever that may be—the irritation produced by the consciousness of restraint which would be felt under the operation of a prohibitive law, by such as differed from the Legislature in their opinion of its necessity.

‘Let me now inquire what is the nature and amount of the evil which is sought to be cured, or greatly lessened, by legislation.

‘The first item on this debtor side of the account is the huge pecuniary cost of the indulgence,—ten or fifteen times as large

as the total cost of literature, including newspapers. We may make a very ample deduction for all that portion of the expenditure which may be reasonably estimated to belong either to medicine or to harmless consumption; and yet, looking simply at drinking as a question of finance, how frightfully does it absorb and turn to waste the productive efforts of our capital and industry. Consider how all other means of happiness might be augmented,—what a cheerful and salubrious dwelling each family might command, what leisure might be purchased, what studies might be pursued, what recreations enjoyed,—how easy it would be for every man to provide for his old age; his abstinence acting doubly, first enabling him to accumulate more rapidly than he does now, and again making a less accumulation necessary for his wants. But while on the question of money, let us remember that not only are our earnings wasted, but our power of earning is grievously weakened by this baneful indulgence. I am not at the moment speaking of that excess which runs into drunkenness. Even when it stops far short of intoxication visible to by-standers, indulgence in liquor injures and ultimately destroys the health, relaxes habits of industry, and makes labour harder to bear. But when we come to the drunkard we see that he not only paralyses his own power of creating property, but he diminishes, and often just as much destroys, that of his family. His children, ill-taught and ill-trained, grow up unskilled and idle; and, even if they remain honest, cannot be called useful members of the community. Thus to the waste of acquired property we must add a quantity of wealth not to be measured, which indulgence in alcoholic drinks precludes us from acquiring. Surely, if there were no other item in the account, a very moderate share of patriotism would impel us all to forego the evanescent enjoyments of alcohol, for the sake of accomplishing so much public good as would result from its disuse.

‘But let us proceed. If the poverty into which the drinker plunges himself were borne by him alone, and if its evil consequences did not press on his neighbours, it might be contended that the mischief did not fall within the province of legislation to remove or control. But every civilized people has either found or is finding the necessity of providing for the

subsistence of all its members, deserving and undeserving. Want in this country forms an unanswerable claim to the necessities of life,—such necessities being furnished by the industrious. It follows also, from the doctrine that all must be maintained, that you cannot relieve any self-supporting class from sharing the burden of sustaining those who cannot or will not support themselves. At all events, such is the state of our law; and, as I believe, a state which cannot be altered. The consequence is, that labouring men artizans and small shopkeepers, are called upon to diminish the pittance which ought to belong to their families, in order to feed the pauper. This is no place for sentiment; and I shall expose myself fearlessly to any censure which I may draw down for using harsh language, when I assert it to be a notorious fact, that the proportion of the destitute who are reduced to pauperism by their own misconduct, or the misconduct of their parents, is vastly greater than that which is brought to the poor-house by misfortune. And it is equally notorious that the misconduct to which I refer is, in the main, indulgence in drink.

‘Let us then, when we speak of the pain produced by legal restraints on the moderate use of alcohol, reflect for a moment on the bitter feelings with which the honest, hard-working, and temperate man must regard the spoliation of his property, to feed his once riotous neighbour; whom he has often seen reeling home at the early dawn, when he himself, after a scanty night’s rest, has been returning to his daily toil. And while on this topic, let me remind my readers of the far deeper affliction which bows down the drunkard’s wife; who, day after day, beholds her husband wasting his substance, and leaving her, and—what she finds much harder to endure—her children, bare of food and clothing; and moving on towards a future still more gloomy than the past or the present. Surely if the pain caused to the innocent by indulgence on the one hand, or by restrictions on the other, is to be made the criterion, prohibition is far more merciful than licence!

‘Descending still further in the scale we come to crime. Now it is part of the definition of crime that it is an injury to others. If, then, the inflictions of crime upon the community are in any great part the creatures of alcoholic drinks, who is there that,—supposing absence from crime, or a considerable diminution of

it, were the only good consequence to arise from prohibition,—would not be ready to sacrifice his alcoholic exhilarations as a trifling contribution towards the purchase of such a blessing? But on this head the testimony is so full and so uniform that it cannot possibly be gainsayed. Every person whose avocations in life have brought him frequently into a Criminal Court, must admit the truth of what is stated by our judges, day by day, and year after year, that by far the greater number of all the offences committed have their origin in the love of drinking; generally in the intemperance of the offender, not seldom, however, in that of the injured party, who thereby affords an opportunity for attack.

‘But, it is objected that, according to the proverb, we must not argue against the use because of the abuse. I venture to question the soundness of the maxim. It appears to me that if the abuse cause more of evil than the use does of good, it is wise to sacrifice the latter to get rid of the former. I grant that if it be practicable to put away the abuse and yet retain the use, in such case the sacrifice is not necessary. And this is the point to which I will now call attention. It cannot be denied that whenever alcohol has been accessible, it has offered to a very large proportion of all who partake in the indulgence an overwhelming temptation to go beyond the limits of moderate enjoyment. In many of our pleasures satiety furnishes a limit soon reached. But, in drinking, every glass appears to create far more thirst than it assuages. And thus the use draws on the abuse by an irresistible force. The principle, that where use has a strong tendency to become abuse abstinence is the legitimate remedy, is no novelty. Every one feels that Dr. Johnson was quite right in refraining altogether from wine, for the reason which he himself gives—that he found it much easier to abstain than to be temperate. Perhaps he meant to intimate that he was able to abstain, but could not be temperate. He was, however, a man of resolute will, and might therefore intend no more than his words literally import.

‘Still in a very large number of cases, the question does not lie between that which is easy and that which is difficult; but between that which is possible and that which is impossible. This class can resist if they steer clear of the temptation arising from tasting liquor. But there is a class of weaker men. These

may have the same desire to escape the enthrallment of alcohol as the former, but they are unable to resist the temptation of opportunity. If drink be within their reach they must have it; and, if they have it at all, they plunge into excess. Thus, then, there are three classes of drinkers. The first can indulge without losing their self-command. The second cannot indulge without losing their self-command, but they can abstain. The third cannot abstain, and always indulge to excess. Now, if all drinkers were of the first class, and could be sure of remaining in it, there would be no abuse; and, consequently, the use need not be sacrificed. So, again, if all drinkers fell into one or other of the two first classes, there need only be a partial sacrifice—namely, the one which the second is willing to make; and thus the objects of prohibition might be gained without the aid of law. The difficulty, then, is created by the existence of a third class, which cannot be protected by any power of its own; while on the other hand the evils resulting from the abuse of drink are almost altogether the work of these unhappy persons. What power, then, short of prohibitive law are we to invoke for the control of this third class? We are told that the progress of improvement has lessened the quantity of drunkenness in the world, and I hope the statement is true. It is certainly lessened in the upper and middle ranks by that amelioration of manners which is the result of a higher civilization. But I am by no means sure that any improvement which has taken place in the ranks below, is in any great degree to be attributed to the same cause. It seems to me rather to be the consequence of legal, and more especially fiscal restraints. And I judge so, because we do not find that in time of prosperity the labouring classes are able to withstand the temptations to drink; high wages giving them a similar command over intoxicating liquors as would be caused by repealing the tax upon them. At all events, the improvement, if perceptible, is very slow; and any hope of great effects is consequently postponed to a future so distant as to be out of the range of prevision.

‘ Thus the hope must be abandoned, as it appears to me, of eliminating the use from the abuse. They must both go or both remain. But the moderate drinker is supposed to say, ‘ Why should I, who am endowed with self-command, give up an enjoyment which works me no ill, that my neighbour, who

has no self-command, should be protected from the consequences of his own infirmity of purpose?' One answer is, that the consequences of his misconduct will reach you, and cause you more discomfort than will be counterbalanced by the pleasure you will derive from alcoholic exhilaration. While Robinson Crusoe lived alone, he might apply to his case bottles now and then with impunity; but when he was joined by Friday, if that model servant had been given to drink, it would have been a wise act in his master to pour out his rum upon the sand. That we suffer from the misfeasances and nonfeasances of those about us, is the great tax we pay for living in society; and if we are of opinion that on the whole we do not gain more than we lose by associating with our kind, our obvious course is to seek the desert.

'But have we not an interest in banishing this temptation, far higher than any which belongs to money? If mature habit may have given us a right to feel secure, that in our own persons we can resist all inducements to excess, have we none dear to us to guard from peril, whose habits have yet to be formed? Have we not our children? Let not parental fondness close our eyes to their dangers. Let us not indulge too much in those day-dreams of their future, in which they are always to do better than we have done, because they are to be made wise by our advice and experience. If we cannot but look upon them as

'Our little selves re-form'd in finer clay,'

we must not *act* on such vain imaginings. No, not even as to him, the little paragon of the nursery, so pure and sensitive, so gifted with talent, so rich in animal spirits, so ardent and successful in the studies of childhood, and who so revels in its innocent enjoyments! Beyond a doubt

—————'Spirits are not finely touch'd
But to fine issues,'

and murmuring these exquisite lines, we project ourselves into the future with a confidence which disdains all misgiving; looking forward to the day when father, mother, brothers, and sisters shall be chiefly known and respected as members of his family, and as bearing his name. Alas! how many proud hopes and confident anticipations has accursed Alcohol dashed to the ground! The son and brother whose steps were watched

with such affectionate interest, whose slightest word or gesture was noted with love and praise in the household circle, is become an object of shame, reproach, and fear; and the mourners learn the bitter truth that the more delicate the organization the keener is the relish for pleasure, the greater is the danger, and the more hideous the ruin. Who has not himself known many a hearth so desolated; and who then shall affirm without presumption that his own peace of mind will never be so blasted!

‘We should now be sufficiently advanced in our journey to be able to see that if it could be done by voluntary acts it would be wise in any community to abstain from intoxicating drinks. But an objection has been raised in this part of the case which must be disposed of before the conclusion can be finally proffered for acceptance. It is said that to get rid of temptation by removing the tempting object precludes us from acquiring the power of self-government; and consequently deprives us of all the advantage resulting from that great acquisition. To this I answer, that the necessity of self-government is felt every hour of the day. In action and repose, in pleasure and in suffering, in our desires and in our antipathies, we ever stand in need of self-control, and man must thoroughly change his nature before that noblest of faculties will cease to be his most urgent want—and inducements to yield when we ought to stand firm will always abound. Even if religion had been silent, philosophy might have taught us the wisdom of avoiding temptation. There were Grecian sages, we are told, who maintained an opposite opinion; and who exposed themselves to certain moral dangers in order to test their capacity for resistance. But as I never heard that their example has been followed in modern times by any who aspired to a reputation either for sound morals or for good sense, I do not think it necessary to enter into any controversy upon such a doctrine.

‘I submit, then, to my readers, that I have proved national abstinence to be desirable. And most assuredly it cannot be obtained on the voluntary principle. For although it might not be a hopeless, though certainly it would sometimes be a difficult undertaking, to persuade the drunkard to consent that the doors of the tavern should be closed against him, yet we shall always have an opponent in the tavern-keeper himself,

on whom the arts of persuasion will be exercised in vain. The drunkard, in his intervals of sobriety, is another being as compared with himself when under the dominion of his insane thirst for liquor; and often longs for protection against his own weakness, even with stronger aspirations than those which urge him on, at other moments, to his destruction. But the trader who makes his livelihood from the manufacture or sale of alcoholic drinks, is subject to no such alternation of opposing desires. He steadily seeks from morning to night, and from night to morning, to augment their consumption. To him the advantage is permanent; and so great that his share of the public mischief arising from the trade is as nothing compared to his particular benefit. Until, therefore, the patriotism of this body reaches a height which it would be absurd to expect, and of which no other class of the community is likely to set an example, we must not look for their voluntary co-operation in destroying the traffic.

‘Repulsed, then, in every other quarter, we seek, though not without reluctance, the aid of the law. But here again we are met with an objection which it may be well to dispose of at once. Such a prohibition, we are told, is not within the province of legislation; but how and upon what principle the limits of that province are defined, we are not told. I know of no other principle than this, which I have already in substance enunciated. The object must be right, and the law must work more good than harm; or, to simplify the proposition, more of good than of harm must flow from the law when it is put in action; a result which can never be obtained unless the law is rightly directed; although, as we know to our cost, a law may be rightly directed, and yet may produce more of harm than of good.

‘It cannot be denied, and ought not for a moment to be concealed, that to make the action of a prohibitive law, interfering in the daily affairs of private life, work well or even tolerably, is a task of great and of all but insuperable difficulty. But having regard to the immense importance of the object to be obtained, the question remains, Is it *quite* insuperable? For if the difficulty can be surmounted, by any degree of exertion, the enterprise ought not to be abandoned. And here we arrive at a stage in which theory is more likely to mislead than to render

us useful assistance. Theorists have usually been considered as tempting us to undertakings beyond our strength ; and that they frequently err on that side is perfectly true. But they sometimes err on the other side, and condemn, as futile, endeavours which are eventually crowned with success. The world was deprived of locomotive engines for many years by a belief, I might almost call it a superstition, which prevailed among mechanists that the friction between the wheel and the rail would be too slight to ensure a progressive motion. And, after experience had proved this belief a delusion, a very eminent professor of mathematics limited the attainable speed of trains drawn by such engines to thirty miles in the hour : all higher velocity, he said, would be found impossible, from the resistance of the atmosphere. I myself, as late as the year 1841, while experiments were making in England for the establishment of the electric telegraph, asked the opinion of a foreign electrician, one of the most celebrated in Europe, as to the feasibility of the undertaking. He answered at once in the negative ; giving as his reason that the electric influence would die away after having been carried a very short distance along the wire ; and that, consequently, stations must be repeated at intervals so frequent as to make electricity, as a vehicle of communication, both too slow and too costly for adoption.

It seems to me, therefore, but reasonable to declare a truce with theoretic objections to a Maine Law, until we learn the success or the failure of the grand experiment, now trying in the United States and the British Provinces of North America. And I own I am not a little disappointed by the tone and the temper in which this great struggle to attain an object of the highest value, is contemplated from our side the Atlantic. That a contest in which strong appetites are allied with great pecuniary interests should be waged with fierce determination, was to be expected. That in such a war there should be some fluctuations of victory and defeat is also in the ordinary course of events ; yet every little advantage obtained by the opponents of the Maine Law is magnified, not from fear lest a great enterprise in favour of human happiness should prove hopeless, but in triumph ; as if it were a fine thing to discover that society is not sufficiently advanced, or that human nature is too unchangeably perverse, to enable us to bear a restraint so much for our

benefit. The undertaking may prove itself beyond human ability to accomplish. I trust not ; and, at all events, the contest is not yet brought to a conclusion. The fight,

‘ Now leaning this way, now to that side driven,’

is still raging,

‘ And none doth know to whom the day will fall.’

Doubts and misgivings I can comprehend. I, myself, am by no means free from them. But how any mind, not biassed by sinister interests, can desire a termination to the American controversy adverse to the Maine Law, I must confess I no more understand, than that it should have been hailed as a triumph if the experiments on the electric telegraph, had demonstrated the suggested incompetency of the electric influence to perform the required service. In the United States, a land of democracy, no such law can be passed unless it is the will of the majority to put themselves under the restraint in question. Nor can it remain on their Statute-book unless that public opinion, to which it owed its origin, is permanent. Again, that majority must be very large; it must be supported by the wealth, the intelligence, and, above all, by the moral and religious convictions of the nation. All these are elements of power, and every element must concur to enable such a law to work itself into the habits and manners of the people. For supposing it only to be desired by a bare majority, the recalcitration of the minority, and the countenance which would be given by so large a body to evasion, would produce mischiefs more than counterbalancing the good which could be effected by the prohibition. These consequences would act on the opinions of the majority; which would gradually melt away and leave their antagonists in the ascendant. The Americans of the United States, then, are, at their own cost and peril, conducting a momentous experiment, from which we may draw a lesson of inestimable value. I have already pointed out in my Charge the advantages which they possess over any other nation, for instituting that experiment successfully. If, nevertheless, they fail, I for one should accept the result as conclusive evidence that to seek the attainment of prohibition in England, would be to engage in a vain quest. On the other hand, if our American friends prove it to be feasible, it would ill become us to abandon the cause and confess our inferiority;

although, certainly, we have some difficulties to encounter which do not stand in their way. The greatest of these arises out of the fact that the legislative power in our own country is in the hands of the minority; a state of things which leads even minds the best disciplined, erroneously to assume that every law must be forced upon the people; and, throughout the whole controversy, I have observed a tacit assumption of this kind perpetually intruding itself into the argument.

Now, I not only admit, but most earnestly contend, that any law which interferes with the habits of private life, cannot in our age and country be thrust on the people. We must wait until they demand it for themselves. This demand, it is predicted by the opponents of the law, will never be made. Such as are of this faith may sit themselves down in tranquillity; assured that no Government, even the most despotic, could impose it on the nation against its will. The enactment of prohibition, then, pre-supposing a popular demand for it, the question is narrowed to this: Ought that popular demand to be resisted? And I am persuaded that if the proposal of a Maine Law were considered from this point of view, it would be seen at once that hostility is out of place. There is all the difference in the world between the legislator imposing his notions of right and wrong on the people for whom he is making laws, and his yielding to theirs. In the latter event, the objector, instead of representing the desires of a whole nation, and pleading the sound policy of leaving their own affairs in their own hands, now represents only a minority, which, rather than unite with a majority in a small concession, oppose themselves to the entreaties of the many for the removal of evils, the magnitude and enormity of which they cannot deny. To me this is the pivot upon which the whole controversy turns. If, therefore, I could be permitted for a moment to suppose myself clothed with dictatorial power, I would not use it, for the enactment of prohibition, until the minority became small enough to ensure that all opposition to the law should be so borne down, by the stream of public opinion, as to be unable to set up any counter current of its own.

What, then, are the probabilities that these very stringent conditions of a Maine Law will ever be satisfied? They rest on the suffering which flows from the present state of things; on the hopelessness of that suffering being assuaged to any very

large extent without the aid of law; on the fact which certainly has not been sufficiently considered, that many, perhaps even the greater portion, of those who are enslaved by habits of indulgence, would consider prohibition as their protector and not their oppressor; on the deep interest and intense desire of all who are connected by family ties with the miserable victims of intoxication, to place them under this valid safeguard; on the small sacrifice which is required to purchase the inestimable blessing of temperance for the whole nation; and finally, on the growth of enlightened philanthropy which, to those under its influence (a body daily increasing), makes a thousand such sacrifices as that of intoxicating drinks felt as nothing, when put in comparison with the delight with which they would contemplate the mass of happiness of necessity arising from the extinction of drinking habits among their countrymen. And, coming down from speculation to experience, I cannot but consider the progress already made in the United States and the adjoining British Provinces, though insufficient both as to time and extent to set the question at rest, has, nevertheless, placed it in a position in which I believe no man on this side the Atlantic, until within the last two or three years, ever expected to find it.

I will now address myself to one or two objections which have been urged against the enactment proposed. The first is usually thus expressed. 'You cannot make men sober by Act of Parliament.' Now this, as a universal proposition, is not true. We make our prisoners sober by denying them intoxicating drinks; and we obtain the power so to deny them by Act of Parliament. At the moment I am writing, journals of great influence, directly opposed to a Maine Law, are demanding the suppression of canteens in the Crimea. What, then, is meant by the objection? The meaning, probably, is, that you cannot inculcate the *love* of sobriety by Act of Parliament. But even in this sense the objection is fallacious; as it does not apply itself to the conditions, without which it is admitted that no Maine Law can or ought to pass. I am supposing a Maine Law demanded and supported by public opinion. Would not the beneficial consequences of such a law in diminishing poverty, disease, and crime, augment and strengthen that love of sobriety on which the law was founded? But assume the law inoperative to change the desires of those who, but for legal impediments,

would fall into pernicious indulgence. Is it, therefore, of no use? Are the laws against theft of no avail because you cannot make thieves love honesty by Act of Parliament? Indeed, a little consideration will show us that if the impolicy of the law is to be determined by the test implied in the question so triumphantly proposed, reasons far stronger might be urged against the prohibition of theft than the prohibition of drink. The law would operate on the drunkard by putting intoxicating liquors out of his reach; but it cannot so operate on the thief. Our goods and chattels cannot be placed out of his reach; and consequently every increase of our wealth, in adding to opportunities for larceny, has a tendency to augment the number of our thieves; a tendency by the force of which we should be overwhelmed, but for our constant endeavours, by improvements in our system of police, and now by preventive and reformatory checks, to counteract the fecundity of the species.

Another objection rests on the fallacy that if you cannot do everything, you must be held to have done nothing. That the good ship Prohibition would leak a little is very probable. Can any law be specified which is never broken? What are our Courts of Justice, our Assizes, our Sessions, and our Police Offices, but so many testimonies that laws are not expected to extinguish offences; but only to keep down their number by dealing in the best manner we are able with offenders. If, then, laws are to be considered as useless because they are not unfrequently broken, our best course will be to put the Statutes at Large into the fire, turn out the lawyers, and apply Westminster Hall to some new purpose. 'It is evident,' says Archbishop Whately, 'that every instance of the infliction of a punishment, is an instance, as far as it goes, of the *failure* of the legislator's design. No axiom in Euclid can be more evident than that the object of the legislator in enacting that murderers should be hanged, and pilferers imprisoned or transported, is not to load the gallows, fill the gaol, and people New Holland, but to prevent the commission of murder and theft; and that, consequently, every man who is hanged, or transported, or confined, is an instance, *pro tanto*, of the inefficiency, *i.e.*, want of *complete* efficacy of the law.'*

* Appendix to *Lectures on Political Economy*. J. W. Parker and Son, 1855.

A further objection is, that by bringing the power of law into the field, we shall weaken the force of moral persuasion. If such an effect were to follow, there would be much to deplore; although most assuredly moral persuasion has no great success to boast in the war against intoxicating drinks. But I confess I cannot see the danger. The law itself would be based upon moral convictions; and the conservation of those impressions will always be necessary to its maintenance. The two forces will be moving precisely in the same direction; and instead, therefore, of the one force being subtracted from the other, both will be added into one sum.

I am not sure that the next objection which I am about to answer has ever been very broadly or very clearly put forth; but I understand the doctrine suggested to be, that to remove temptation is not within the legitimate scope of jurisprudence. In holding out temptation it may be said neither fraud nor violence is exercised. The tempted is free to stand or fall. The Legislature, therefore, in making laws to prohibit a temptation, is, in truth, guarding a man against himself; and thus going beyond the functions of society, which was formed solely to protect men from each other. In answer to this objection I would submit, that whether the victim is ensnared by fraud or overcome by violence, or falls a prey to allurements which he cannot resist, although not deceived as to the consequences which he is bringing upon himself, is immaterial. The true question remains untouched,—Is an injury inflicted which law can prevent without the introduction of a greater evil? Are the objectors, I would ask, prepared to leave the sale of alcohol entirely without restriction? Are they prepared to permit brothels to be opened, or gambling to be practised with impunity? If not, the principle of interference is conceded; and that being so, the *quantum* of restraint, from the slightest intermeddling up to prohibition itself, must be determined entirely by the consideration of how the law may be made most effective for its object,—with a never-sleeping caution, however, against letting in consequences which overbalance the benefit produced.

But a distinction has been taken. It has been said you may legislate against temptation to do that which is wrong *ab initio*, or, in other words, which has no use attached to it, but is alto-

gether abuse; and thus they would justify the suppression of brothels and gambling. But is this a valid distinction? Certainly it is not one sanctioned by usage either in this or in any other country; and is in contradiction to the doctrine of the objectors themselves, who justify the moderate use of alcohol, and at the same time admit that its manufacture and sale cannot be put on the footing of other articles of consumption, like bread, meat, and so forth. Again, it would not be easy to prove that all gambling is morally indefensible. The Vicar of Wakefield's twopenny hits at backgammon with his clerical brother, were not only an act but a habit of gambling, yet he must be straitlaced, indeed, who would reprehend it. Our law does not; thus tacitly acknowledging that there may be a use, and legislating only against the abuse. And if by this moderate exercise of control, gambling can be so kept within bounds as to work no great amount of public injury, a sound discretion is exercised; for in no case ought coercion to extend beyond the requirements of the general welfare. So in regard to the sale of alcohol; if regulation had been found sufficient, prohibition would not be justified.

It would, however, be a want of candour to conceal that in bringing temptations within the scope of criminal jurisprudence, the Legislature is treading upon ground which demands extreme wariness at every step,—that personal freedom of action is a sacred right and of immeasurable value, not merely to the individual, but to the community of which he is a member; and that the law must overlook many aberrations, rather than weaken the spirit of enterprise and self-reliance, created and fostered by this high privilege.

I now arrive at the crowning objection by which the advocates of a Maine Law are sought to be placed between the horns of a dilemma. You admit, say the objectors, that you will not even ask for a Maine Law until you have secured an immense preponderance of power in its favour; that power consisting not only of numbers but of property, of intelligence, and of moral sentiment. But, they continue, if you have won over these potent allies, why ask for a Maine Law at all? Why not depend on that overwhelming public opinion which you concede must come into existence before a Maine Law is admissible? This, they say, is your dilemma. While your cause is unpo-

pular, a Maine Law cannot be obtained. When it becomes popular, it is not required. What is your answer? My answer is, that the dissident minority still retain the power of inflicting great evils on the majority by excesses, of which their innocent families and their sober and well-conducted neighbours must bear the consequences; and that the minority will be joined in their mischievous acts by that large class of which I have already spoken, whose capacity for self-government is unequal to the task of making their conduct conform to their convictions. So long as this class is not protected from temptation by a Maine Law, although their sober opinions coincide with those of the majority, their practice will go to swell the public mischief caused by the minority.

‘ There remains only to consider the aids and the obstacles which present themselves for and against the enactment of a Maine Law in this country. The aids are limited to that growing conviction of the necessity for such a measure which, so far as I can judge, is making its way among all classes; a sentiment which I expect will be quickened by the competition for supplying the markets of the world with manufactures, which we shall have to encounter from other nations not so enthralled as ourselves by the vice of drunkenness. The late Exhibition in France must have shown our manufacturers, that foreigners lack neither skill nor enterprise; and if we are for the present protected by our enormous capital, and our wonderful means of distributing our products throughout the world, yet we must not forget that capital has often changed her metropolis. That her Western progress, from Venice through Genoa and Amsterdam, may not have arrived at its termination in London; but may be continued to New York. That on all sides thick-coming portents indicate that we shall have to encounter a severe struggle for pre-eminence; and that in the race for commercial existence with young and active competitors, we shall not be first at the goal if we cannot shake off the weight of intemperance.

With respect to the obstacles to the progress of Maine Law doctrine, they are indeed mighty and numerous. As regards the press, a fearful majority of those journals and periodical works which are most conspicuous for their talent, or most formidable from their popularity, are earnestly, not to say vio-

lently, opposed to prohibition. And so long as Minerva throws her *ægis* over Bacchus, his bloated carcase will be secure from assault. Doubtless it is true that when the public mind shall have changed, either the present representatives of its opinion must change with it, or new ones will be substituted in their place; but meanwhile they exercise a most baneful influence upon that opinion, and retard, though they cannot altogether prevent, its amelioration. Their hostility is the more potent, as it is for the most part free from suspicion of sinister motives; and thus the Anti-Maine Law cause obtains credit for sincerity in its advocates. Nevertheless, that reputation masks no inconsiderable force of opposition, which cannot be referred to a justifiable origin. This state of the press, arms with great power the body which is organized for the protection of pecuniary interests. Formidable as this body is by their numbers, their wealth, and their discipline, they would fight under great disadvantages if they stood alone. When the question is—How shall we deal with the traffic which has wrought us so much of suffering?—we should lend an unwilling ear to the pleading of brewers and distillers, if it found no echo in the applause of disinterested bystanders. The cries of Demetrius and the silversmiths, that their *craft was in danger*, were not calculated to make the world, beyond the walls of their city, conform to the creed urged with such passionate iteration, that ‘Great is Diana of the Ephesians.’ Hence the importance to the enemies of the Maine Law, of that alliance with literature which at present it cannot be denied they enjoy.

But they make their power felt in another way, which has never yet obtained a notice commensurate with its importance. The tradesmen engaged in the sale of intoxicating drinks, form, in every large town, a numerous and compact body of voters; each followed by a knot of obsequious customers, kept in dependence upon him by a long array of chalk scores behind the door of his tavern. And this body consequently holds in its hands a fearful amount of elective power; both as regards Parliament and the Municipal Councils. Some of our principal towns are at this moment entirely at its command; and others have only been redeemed by severe contests between it and such of the inhabitants as are free from its influence.

In pointing attention to the body engaged in this traffic, I

am influenced by no personal feelings of hostility towards its members. On the contrary, my predilections are with them. For many years I acted as Counsel to the great Association of the Licensed Victuallers in London. I have had occasion to know and to admire their efforts to provide for the wants of their less affluent brethren. I stood by them while Lord Melbourne, then Prime Minister, laid the first stone of a noble edifice erected at their cost, for the education of their orphan children. I was their professional adviser in the establishment of their Insurance Office; which they founded that each among them might be induced to make provision for his family after his death. I was not infrequently called upon professionally to consider the course pursued by the daily journal which they have established, and raised to a position of great influence; and I always found it the steady and able advocate, of the principles of civil and religious liberty and of social progress.

The manufacturers and vendors of intoxicating liquors, follow the calling to which they were brought up. Until of late years none censured the tradesman, and few censured the trade itself. It would therefore be not only uncharitable, but unjust, to assume that the individuals engaged in the traffic, are conscious that their avocation is one inconsistent with the welfare of their countrymen. Not the most ardent prohibitionist will place the sale of intoxicating liquors on a footing with the slave trade, or the holding our fellow-creatures in bondage; and yet the time was when the purest and most enlightened friends of liberty, were unconscious that the negro race had any claim to the rights of man. History does not furnish us with a name standing higher than that of John Locke, as an opponent of despotism—whether of the mind or the body. As a philosopher, he investigated and established many true principles of liberty, civil and religious. As a citizen, he endured with firmness, exile and persecution for their sake; and yet this great political philosopher, when called upon to frame a constitution for the Province of Carolina, formally enacted that every freeman of the State should have absolute power and authority over his negro slaves. After such an example it would be absurd indeed, as well as unjust, to doubt that the plainest of moral principles may remain undiscerned by individuals of honest and intelligent minds. It is, therefore, impossible not to feel concern for those who may

be losers by the reformation in view. And if I could forget the suffering which the procrastination must necessarily entail on multitudes, I should rejoice to be able to state, what I nevertheless must admit, that I see no prospect of any living tradesman witnessing the extinction, or even the serious diminution, of the liquor traffic. But if I were likely to possess influence over any individual engaged in the trade, I would advise him to pause before he resolved to bring up his offspring to his own avocation. It may already be doomed; although he himself may not live to witness the execution of the sentence. Many trades have passed away; and those who have clung to them to the last have suffered for their want of foresight, or for lack of resolution to break up a concern in which their capital was embarked, and for which they were fitted by long training. Let, then, the licensed victuallers and their brethren, not concentrate all their exertions upon the maintenance of a cause, which every advance of civilization will expose to new dangers. It matters not to the tradesman by which of his opponents he is overcome. If moral persuasion has the efficacy attributed to it by many able writers, then, even should a Maine Law never pass, the consequences to him will be much the same; perhaps even more disastrous, as the absolute extinction of a trade imperatively calls upon all those who follow it, instantly to betake themselves to some other pursuit; while, as regards the trade slowly dying away, many still cling to it in the vain hope of its resuscitation. And if moral control shall be found, as I fear it will be found, in the future as in the past, insufficient to produce the desired effect, this experience will furnish many a recruit to the Maine Law banner, from the advocates of moral persuasion. But suppose intemperance to prevail, and to ward off all the attacks of both its opponents.—Who is so bold as to answer for the nation itself not succumbing to the ardour of its numerous rivals?—presenting to the trading classes of our posterity an arena in which the struggles to live are severe but hopeless,—the slain a countless host,—the survivors a scanty remnant!

**PRESENT STATE OF NORTH AMERICA RELATIVE TO LEGISLATION
AGAINST THE SALE OF INTOXICATING LIQUORS, JAN. 1, 1857:**

UNITED STATES.

*PROHIBITION in full and satisfactory operation in the following
of the United States :—*

STATE.	Date of Law.	Area in Square Miles.	Population (1850).	Representatives in Congress.	REMARKS.
Massachusetts	1852	7250	994,514	11	In this State, after much opposition, the law stands firm.
Rhode Island	1852	1200	147,545	2	Much obstructed at first, has since been improved, and is now in beneficent operation.
Vermont. .	1852	8000	314,120	3	Adopted at the earliest date, by unanimous acclamation; this law has always been effectively sustained.
Michigan .	1853	56,243	397,564	4	The legal difficulties which at first obstructed this law have given way; the Supreme Court, with one dissentient voice, having pronounced the law constitutional.
Connecticut .	1854	4750	370,792	4	After repeated efforts, this State rejoices in an effective administration of the law.
Delaware .	1855	2120	91,532	1	The first of the Slave States to adopt prohibition.
Iowa . . .	1855	50,914	192,214	2	Ratified by a popular vote.
New Hampshire	1855	9280	317,976	3	Completing the list of New England States.

*States in which PROHIBITION is the Law, but in which its
operation has been impeded or set on one side by hostile legal
decisions :—*

STATE.	Date of Law.	Area in Square Miles.	Population (1850).	Representatives in Congress.	REMARKS.
Indiana . .	1855	33,809	988,416	11	Is practically useless, having been declared in its present form unconstitutional. The difficulty is, however, merely technical.
New York .	1855	46,000	3,097,394	33	After six months of most beneficial operation, the law has been decided to be unconsti-

STATE.	Date of Law.	Area in Square Miles.	Population (1850).	Representatives in Congress.	REMARKS.
Minnesota . (Territory)	1852	141,839	6,077	—	<p>tutional. The points raised were, of course, purely technical and local—such as a collision between State and general law, the peculiar difficulty of a Federal Union,—and the power given by the State Constitution to the Legislature as regards confiscation of property. The law will be amended, not repealed.</p> <p>The Supreme Court decided that this law was unconstitutional, on the ground that it had been submitted to a direct vote of the people. The people, however, having sustained it by a large majority, the Legislature has not repealed it.</p>

In the following States PROHIBITION has suffered temporary popular disaster :—

STATE.	Date of Law.	Area in Square Miles.	Population (1850).	Representatives in Congress.	REMARKS.
MAINE . .	1851	35,000	583,169	6	<p>The Pioneer of Prohibition ;—complicated with the Nebraska and Kansas questions, the cause of prohibition was defeated in 1855, and a law of the most stringent and severe restriction was substituted. The results even of this were so alarming as to result in the indignant rejection of the Governor of 1855, and the election of representatives unanimous for prohibition, which will be <i>immediately re-enacted</i> by larger majorities than ever known in the State on any question.</p>
Illinois . .	1855	55,409	851,470	9	<p>An ill-constructed law, since repealed, to be replaced by a better.</p>

States and Territories in progress towards PROHIBITION, or in which Laws of Partial PROHIBITION, or severe Restriction, have been already adopted:—

STATE.	Date of Law.	Area in Square Miles.	Population (1850).	Representatives in Congress.	REMARKS.
Ohio . . .	1854	39,964	1,980,329	21	A stringent law prohibiting sale of all liquors, except wine and cider, made from native produce.
Pennsylvania	1855	46,000	2,311,786	25	Retail trade prohibited, but legal difficulties obstruct the full operation of the law.
Wisconsin .	—	53,924	305,391	3	The elections of 1855 resulted in the choice of a Governor favourable to prohibition, but the law was lost by a narrow majority.
Maryland .	1855	11,124	583,034	6	Passed by the Representatives, but lost in the Senate (Slave State).
New Jersey .	—	8,320	489,555	5	The law recently lost by an even or tie-vote. The Council of Jersey city have carried out a sort of prohibitory ordinance among themselves by a vote of ten to one.
South Carolina	1856	29,385	668,507	6	Slave State. Total prohibition on Sundays.
Tennessee .	1856	45,600	1,002,717	10	Slave State. Prohibition of sales in quantities of less than one quart.
Texas . . .	—	237,504	212,592	2	A law prohibiting retail sales was sustained by an overwhelming majority in 1854, and has since received extension.
Nebraska. .	—	335,882	—	—	Almost unanimous petitions—all the females joining.
Mosquito (INDIAN).	—	—	—	—	Total prohibition, as stipulated expressly in the treaty recently signed by Lord Clarendon and Mr. Dallas.

BRITISH AMERICA.

NEW BRUNSWICK.—A law of partial prohibition in 1853—repealed in 1854. Total prohibition adopted 1855, and enforced in 1856. The hostility of the Lieutenant-Governor to the law enabled its enemies to repeal it. The province is now under most stringent licence. Prohibition will shortly, in all probability, be re-enacted.

NOVA SCOTIA.—Narrow majorities in some technical points of order have delayed the measure in this province.

PRINCE EDWARD'S ISLAND.—Narrowly defeated in 1854.

CANADA.—Lost in 1856 by 51 to 50. Many counties are under 'No-licence' authorities, and are consequently without the sale of intoxicants.

These tables came to me from a highly respectable source. Still, it is right to avow that my informant holds pro-Maine Law opinions.

A table, nearly similar, dated April, 1856, I sent to the Honourable George Boutwell, late Governor of Massachusetts. In November of that year, he returned me an answer, from which I give the following extract:—

‘The Maine Law movement has been entirely overshadowed by the contest upon slavery, yet there is no reason to suppose that public sentiment has retrograded, though there may have been no progress since the repeal of the Missouri prohibition.

‘The principles of the Maine Law are, however, firmly fixed in the policy of the Eastern (I mean the New England) States, and will not be abandoned. Changes there may be, as in Maine itself last year, but they will be temporary. The people will secure the power to close any dram-shop whenever they please. And this is a great conservative force of society, and practically used or neglected, according to the local public sentiment. You are, no doubt, told that in the cities and large towns the traffic is almost uninterrupted. This statement is not entirely false; indeed, it may seem to some to be literally true, yet, even in the cities, the dealers are obliged to preserve an appearance of respectability, while in the rural districts the traffic is broken up, or carried on in secret. Your table seems to me to be correct, though I have not the authorities by which I can verify all the statements.’

‘On the Effect of Good or Bad Times on Committals to Prison.
BY THE REV. JOHN CLAY.

[Read before the Statistical Section of the British Association for the Advancement of Science, at Liverpool, 23rd September, 1854.]

‘It has long been a popular opinion that committals to prison increase under the pressure of ‘bad times,’ and diminish when that pressure is removed. This opinion appears to be in many respects erroneous; and it may not be useless, therefore, to show how, in reality, crime and disorder, as indicated by committals to prison, are affected by the vicissitudes in the industrial and social state of the working classes.

‘The facts and observations which I have to submit are

drawn from the Annual Reports which it has been my duty to present to the magistracy of Lancashire since 1824. They relate to the County House of Correction at Preston—the chief prison for the northern division of Lancashire—which division includes the large manufacturing towns of Preston, Blackburn, Burnley, Chorley, Haslingden, Accrington, &c. The population of North Lancashire was 402,600 in 1841, and 461,400 in 1851.* My report for 1826 contained the first notice of the connexion between distress and committals; and I therefore venture to quote the following passage in it:—‘The interval between July, 1824, and July, 1825, was one of general prosperity and comfort among the labouring classes of the surrounding district; that from July, 1825, to July, 1826, included a period of perhaps unprecedented distress. Yet in this latter period, the felony list presented no augmentation. . . . While 40,000 or 50,000 of the poor were existing upon charitable contributions, it cannot be ascertained that a single theft (recorded in the calendar) was caused solely by hunger. The few persons who pleaded distress as an excuse for their offences were, in every case, old offenders.’

‘During the prevalence of this distress, I had many opportunities of witnessing what I have often seen since—the fortitude and patience exercised by the working-classes in times of suffering, and the admirable self-denial with which many, who were themselves in poverty, assisted the utterly destitute. From a table given in my Report for 1830, it appeared that, during the four ordinary years ending with June, 1824, the annual average of committals to the sessions was 119; the prosperous year 1825 produced 177 committals; the following year of distress, 172; and the year of reviving prosperity (ending July, 1827) no less than 269.

‘This lamentable anomaly in the moral condition of the working classes can only arise from the fact that high wages, to the ignorant and uneducated poor, bring with them the means of gratifying the propensity to intoxication, which is so fatal to their comfort and character.’

* ‘The Hundred of Lonsdale commits cases for trial to the Lancaster sessions. These cases—few in number—are therefore excluded from consideration. All offenders convicted summarily are sent to Preston. This having been the invariable practice, the question treated of in this paper is not affected by it.’

‘The opinion thus expressed a quarter of a century ago has been but too well confirmed by the experience of every succeeding year.

‘The ten years ending with June, 1844, were marked by several events greatly prejudicial to the moral and industrial welfare of the working classes in North Lancashire. In 1836-7, a spinners’ ‘*strike*’ at Preston threw nearly 9000 hands out of employ for about four months. Nearly two-fifths of these hands were under nineteen years of age; and the consequence was, a great increase in the number of *young* offenders committed to the sessions. It was noted, however, at the time, that ‘idleness, and not want, had been the immediate cause of crime in almost all the cases which could be clearly referred to the ‘*strike*.’* And even in this year of distress, the committals to the sessions were less by fifty-nine than those of the corresponding period ten years before, when ‘employment for the poor had again become pretty well distributed.’† From 1838 to 1842 (with a favourable interval in 1840), want of employ, and consequent privation, gradually pressed more and more upon the manufacturing population of North Lancashire, until, in the winter of 1842-3, their sufferings became severe almost beyond example. At this time, also, a spirit of sedition and riot had loosened the restraints which the masses in North Lancashire are usually willing to acknowledge; and the autumn of 1842 was marked by an amount of agitation and violence which betokened no slight danger to the permanent welfare of the manufacturing districts. Two years before this time, however, and owing, no doubt, to the growing (and providential) conviction of the necessity for such a measure, the County Police Force had been organized; and it was now found capable of arresting and of permanently subduing the dangerous spirit which had been excited into action. Under all these circumstances, therefore, a considerable increase in committals might be expected. The zeal and activity of the new constabulary added to the number of apprehensions and committals, though there might be no corresponding increase of actual crime. Political disaffection encouraged dishonesty and violence to an extent which poverty alone would not have provoked: at this

* Report for 1837.

† Report for 1830.

time, also, prison discipline in North Lancashire was in a state calculated to promote rather than repress crime; and to all this it may be added that, hitherto, little or no progress had been made in efforts to extend the benefits and blessings of education.

‘Of ninety-six men tried for riot, &c., in the Chartist outbreak in the autumn of 1842, sixty were unable to read, and thirty-six were ignorant of their Saviour’s name.’

‘I present a summary of the committals for the ten years now treated of, in which it will be observed that, in the year of greatest distress, the ordinary committals were 20 per cent. below those of the preceding year. In order to free a comparison between the several years from the effects of temporary or accidental influence, the following offenders are excluded:— 1, soldiers under sentence of court martial; 2, debtors; 3, females under *summary* conviction;* 4, Chartist rioters. The remarks are literally or substantially quoted from the reports of the respective years:—

Year ending 1st July.	Committed to Sessions.	Committed summarily.	REMARKS.
1835.....	168	642	
1836.....	187	715	
1837.....	277	627	‘Spinners’ strike, which lasted from the end of October to February.’
1838.....	302	762	‘Suffering among hand-loom weavers.’
1839.....	361	655	‘High price of provisions and scarcity of employ.’
1840.....	394	937	‘Increase of committals mainly attributable to the establishment of the County Police.’ ‘No want of employ, and times favourable.’
1841.....	485	901	‘Trade in a depressed state.’
1842.....	611	1053	‘Great and prolonged suffering.’
1843.....	497†	1215	‘The depression at its lowest point.’
1844.....	433	894	‘Full employ. Prison discipline well established.’

‘The next ten years, ending with June, 1854, embraced two seasons of great manufacturing prosperity, and one of extreme distress. The following is a short summary of the period, framed on the same principle as the one given above:—

* These are excluded because at one time they were committed to Lancaster Castle, and at another to the Preston House of Correction.

† This number is exclusive of 123 Chartist rioters.

Year.	Sessions Cases.	Summary Convictions.	REMARKS.
1845.....	301	700	'Abundance of work. Prison discipline in beneficial operation.'
1846.....	289	666	'Occupation at the factories not so readily obtained. Many hundreds of hand-loom weavers out of employ.'
1847.....	366	646	'Never have the combined evils of scarcity of food and scarcity of employ pressed so heavily.'
1848.....	343	843	'The distress at its maximum.'
1849.....	339	1279	'Times greatly improved.'
1850.....	325	1323	'A period of great and continued prosperity.'
1851.....	387	1456	
1852.....	417	1226	
1853.....	442	1012	
1854.....	470	957	'The Preston strike.'

'The first season of prosperity (ending with June, 1845,) occurred at a time when a vigorous and reformatory prison discipline had begun to develop highly satisfactory effects in the decrease of committals, and especially of recommittals. The manufacturing distress which followed in 1847-8, unlike that of 1842-3, was attended by no Chartist excitement, nor by any other influence likely to aggravate whatever tendency to crime distress might have created.

'In my Report for 1847, I observed: 'Never within the term of my chaplaincy have the combined evils of scarcity of food and scarcity of employ pressed so heavily as during the last winter; and never—to the great credit of thousands of sufferers—have offenders, pleading distress for their faults been fewer in number.' Yet, in these very hard times, the committals to the sessions were not increased to the extent which might have been expected, and the summary convictions were fewer than they had been for ten years.

'The increase to the sessions, as invariably the case in times of compulsory idleness, and as previously exemplified in the strike of 1836-7, consisted almost entirely of boys. 'It is chiefly from among the *idle*, not the *hungry*, factory-boys that the additions to our year's calendar are drawn.' 'Juvenile delinquency (as compared to the preceding year) was increased to the amount of 92 per cent.* In the winter of 1847-8, dis-

* Report for 1847.

tress pressed upon the operative classes with a severity never before exceeded,—perhaps never before equalled. My report for that year contains a table framed from data collected by the Chief Constable of the County, Capt. Woodford, ‘showing the absence of any marked connexion between poverty and crime, as well as *the creditable disproportion between sufferers and offenders.*’ It appeared from the returns in question that, during this disastrous period, 45,000 mill-hands in North Lancashire, irrespective of other operatives, were either working short time, or were altogether unemployed, and that in the Preston Union nearly 12,000 *adults* were receiving out-door relief; yet the committals to the sessions, so far from exhibiting an increase, showed a decrease of nearly 7 per cent. on the committals of the preceding year.

‘The excess of summary convictions in 1847-8 arose chiefly from vagrants and workhouse disorderlies.* In 1849, the prosperity, which had ebbed so far and so long, began to flow once more through our manufacturing districts, until in the summer of 1853 it reached a height seldom equalled in the industrial history of the country. But the figures in the preceding page bear witness that this tide of material benefit was productive of—at least accompanied by—no little moral wreck. When the season of suffering had passed away, it became too manifest that the wholesome lesson which it might have taught had been neglected. Thousands who had resisted the temptations of distress yielded to the temptations of prosperity. Good wages were too often squandered in vicious indulgence; and committals for offences occasioned by drunkenness began and increased with lamentable rapidity. If a comparison be made between the crime and disorder attendant on the three years of operative distress (1846 to 1848) and the four years of abundant work and high wages (1850 to 1853), it will be found that the

* In the very valuable Report of Capt. Willis, the Chief Constable of the Borough of Manchester, for 1847, that gentleman expresses his satisfaction that ‘upon the expiration of a year marked by almost unexampled prostration of the trade and commerce of the country, and consequent distress amongst the working classes,’ he can produce ‘returns which will bear advantageous comparison with those of previous years.’ A table given by Capt. Willis shows that the committals for trial and under summary convictions in the Borough of Manchester, for the two *prosperous* years, 1844 and 1845, amounted to 10,436; and that for the two years of *distress* which followed, 1847 and 1848, they amounted only to 7635.

average yearly committals to the *sessions* during the *hard times* were 332, while during the *good times* they were 390. The yearly average of *summary* committals during the hard times was 718, during the good times it was 1249! or, taking all the committals together, 1051 was the yearly average from 1846 to 1848, and 1639 the yearly average from 1850 to 1853.* The comparison now made rests on conditions only affected by good and bad times. No social or political agitation interfered with those conditions; no changes in police or in prison discipline influenced the number of apprehensions or of committals; and the ten years now under consideration may therefore be regarded as well calculated to show the true relation which subsists between crime and disorder on the one hand, and good or bad times on the other.

‘The last of the ten years under consideration—the year ending 1st July, 1854—saw the town of Preston, with its 70,000 inhabitants, suffering from a contest which will leave its disastrous consequences behind for many years.

‘The Preston strike threw out of work about 18,000 factory hands, to say nothing of other operatives whose employment depended more or less directly on the mills. The results in respect to committals from the town were such as the experience of similar events in past years prepared me to anticipate. On comparing the six months of the strike with the corresponding six months of the previous year, it appeared that the committals to the sessions, of youths under 21, rose from 18 to 36; youths committed summarily decreased from 49 to 40. The committals of male adults to the sessions rose from 42 to 52; male adults summarily convicted decreased from 71 to 47. The committals of young females decreased from 30 to 10; the decrease in the committal of older females was from 68 to 40. As a general result, committals of all kinds from Preston during six months of the strike (from 1st November, 1853, to 30th April, 1854) diminished 22·7 per cent. as compared to the corresponding six months of the preceding year; they diminished 32 per cent. as

* ‘During the four prosperous years the committals were much more affected by Irish immigrants than during the three years of distress. Putting the Irish out of the question for both periods, and taking sessions and summary cases together, the discrepancy remains very striking: viz., average of three bad years 946; of four good years 1,346.’

compared to the committals of the six months immediately preceding the strike.

‘To be taken in connexion with these facts is one which will serve to explain them, viz., the diminished squandering of money in public-houses and beer-houses to the amount of 1000*l.* per week during the time the strike lasted.

‘In order also to do justice to the good conduct during the strike of those who had been misled into the deplorable act, it should be remembered that while only 86 young persons under 21 years of age were sent to prison, more than 8500 young persons of the class to which they belonged had been living for more than six months in complete idleness, and in considerable suffering.

‘The general conclusions deducible from the facts now detailed appear to be, that ‘bad times’ may add a few cases to the sessions’ calendars, and that ‘good times’ greatly aggravate summary convictions; that the increase to the sessions consists of the young and thoughtless, who, when thrown into idleness, are liable to lapse into dishonesty; and that the increase of summary cases arises from the intemperance which high wages encourage among the ignorant and sensual.

‘In my Report for the prosperous year 1845, it was shown ‘that when, in 1842-3, the operative was suffering most severely from want of employment, intoxication, as a cause of crime, was, compared to other causes, less than 17 per cent.; while now (1845) that labour and skill are in the greatest demand, and wages are unusually high, the criminality attributable to this debasing propensity has swollen to 41 per cent.’ In a previous Report (1843), in noticing the small proportion of females committed during the distress of 1842-3 (1 female to 6·6 males), it was suggested that ‘in it we find what strengthens the opinion as to the inadequacy of poverty alone to account for the amount of crime. Every one conversant with the condition and habits of the poor knows that when distress falls upon their families, it is the mothers who feel it most poignantly. Too often they and their children are wanting necessary food while their husbands are spending the last sixpence in the ale-house. Too often, when the husband is on the tramp seeking employ, or still worse, when he has entirely deserted his family, the poor wife is left to resist as she may the temptation to

obtain by dishonesty the bread for which her children are crying. When, further, the large amount of destitute widowhood is taken into the account, the conclusion appears to me irresistible, that '*want and distress, uncombined with dissolute habits, are rarely operative in producing crime.*'

'I venture to hope that the truths which I have now endeavoured to establish will not be regarded as the barren results of a mere statistical investigation, but as a matter of deep moral and social significance.

'In this country, and at this time, it ought to be felt as a grief and a reproach demanding anxious attention, that the material prosperity of the industrious classes should be so constantly accompanied by the moral degradation of a large portion of them. In the tendencies and habits of many of our artizans and labourers, there must be something deeply wrong when '*what should have been for their wealth is to them an occasion of falling.*' The deplorable truth is, that the wide want of moral and religious instruction, and of really useful knowledge, debars MILLIONS of our working population from the true use and enjoyment of the advantages within their power. The money earned by their toil and skill, instead of being employed in accordance with the dictates of prudence and the requirements of civilized life, is dissipated in rioting and drunkenness; and the results are misery, crime, and the gaol.'*

EFFECTS OF PROHIBITION IN THE UNITED STATES.

The information which the reader will derive from the following extracts, is due to Dr. Frederick Lees, from whose work on '*Prohibition*' they are drawn. The book itself is a highly instructive and interesting repertory of facts and arguments in favour of adopting the Maine Law in this country. I regret to observe that the learned author is now and then betrayed by his zeal into personalities.†

§ 148. Let us now indicate, by some facts and figures, and by official, political, and professional testimonies, beginning with

* *Journal of the Statistical Society of London*, vol. xviii., part. I., March, 1855. Parker & Son.

† *An Argument for the Legislative Prohibition of the Liquor Traffic.* By Dr. F. R. Lees. London: Tweedie, 1856. Price 1s. 6d.

NEW YORK STATE, what have been the *social results* of an imperfect—because initial and impeded—prohibitory law.

‘In publishing statistics on this question, we shall, so far as is possible with the documents before us, eliminate or distinguish sources of fallacy and confusion. . . . For example, we shall not, in estimating *crime* lessened by the law, take account of the cases of violation of the law itself—which are for acts that, in their relations to the public, *were the same before they were treated as offences as now*, only vastly more numerous and mischievous. Sometimes, even, we shall not notice ‘Drunkenness,’—first, because, in this argument, we treat of drunkenness, not so much on its *own* account, as for that to which it leads—and, second, because, in very many places, *before* the law was passed, simple drunkenness was left unheeded by the police, but *after* the law it was narrowly watched, and instantly pounced upon. In both such cases, the *acts of offence* might be greatly diminished, while the *committals* were somewhat enlarged.*

‘The returns in the following table, illustrating the partial operation of the New York Law, are for the same period (save Utica), which is but for four months, instead of six—namely, from the 6th July to the 31st December inclusive of each year, excluding cases of simple drunkenness :—

Committals for Offences excluding Drunkenness.	1854.	1855.	Decrease in favour of the Law.
Cayuga County Gaol	85	59	26
Onondaga „	138	103	35
Seneca „	75	28	47
Ontario „	89	45	44
Albany Watch-house	1974	1278	696
Syracuse (Police Record)	778	515	263
Auburn „	104	50	54
Rochester „	1552	740	812
Utica „	165	80	85
	4960	2898	2062

* ‘Some one quoted Judge H. W. Bishop, to prove that the Law made bad worse. ‘Criminal business has very largely increased under the New Law.’ Was this true? Quite true—for *one side* of truth. Turning to his Charge, we find he goes on to explain, ‘I had, in my last term in the county of Middlesex, no fewer than 104 indictments *under the new law*. I say, without fear of contradiction, that nine-tenths of all crimes of personal violence are committed in a state of intoxication ; and if the source of the evil is dried up by the new law, Judges by-and-by will have little criminal business to attend to.’

' Such results, however, were nothing new. In the County of ONTARIO, under the operation of *No-licence*, the inmates of the gaol were reduced from 125 in the year 1845, to 53 in 1486. In 1847, licences were again granted, and the inmates of the gaol increased to 132. In the County of GENNESSEE, a similar course of things—No-licence succeeding to Licence—produced similar issues.

' So in *Potter County*, PENNSYLVANIA, the traffic has been for a considerable time suppressed, the Judge refusing to grant any licence. The consequences have been, that the *prison has become tenantless; there is not a solitary pauper in the county*; the business in the Criminal Court has ceased, and taxes have been reduced one-half.

* * * * *

' PORTLAND CITY, MAINE STATE.

' *Ten Months' Effects (June 1st to March 20th).*

	1851.	1852.	Decrease.
' Committed to Almhouse	252	146	106
Inmates of Almshouse on March 20th . . .	112	90*	22
Outdoor aid to <i>Families</i>	135	90	45
Committed to HOUSE OF CORRECTION for <i>Intem-</i> <i>perance</i>	46	10†	36†

' 'At the term of the District Court, in March, 1851, there were 17 indictments; at the term for 1852 there was but *one* (for petty larceny), and that the result of a mistake.'

' In the time of Mayor Dow, the House of Correction was empty: but some relaxation in the police (*the seven-years electoral justices*, be it remembered, *yet* contain rum-men amongst them, who wink at evasion) having followed, we find that in 1854, nearly *one* a week was sent to the House. In a pamphlet of 100 pages, published at Toronto, entitled *The Maine Law Illustrated*, being the tour of investigation made in February, 1855, by Mr. A. Farewell and Mr. G. P. Ure, on behalf of the Canadian Prohibition League, we find a vast number of testimonies to the same effect, from persons of the highest character, including bishops, judges, governors, mayors, marshals, magistrates, ministers, professors, physicians, counselors, representatives, &c. Their own conclusion is thus stated:—

* N.B. 75 of these came here through intemperance.

† Notwithstanding much greater activity of the police under the new law.

‘ It is almost universally acknowledged to be as successful in its operations as any other penal law that was ever enacted.’ At Calais, on the New Brunswick border, N. Smith, Jun., of the Executive Council, says:—‘ Where enforced, the results are good; the only places where it can be said to have failed are where they have had Anti-Maine-Law Justices—*irresponsible* for seven years, save by impeachment. Many of those *who sold liquor* have turned their attention to other businesses, *and are now better off than when selling liquor*. They have far fewer bad debts, and more reliable customers.’ Mr. Sydney Perham, Speaker of the House of Representatives, says:—‘ My knowledge of the workings of the law extend over a large section of the State: I can assure you, the law *works well*.’ Professor Pond, of Bangor, says:—‘ I have not seen a drunken man in our streets for the last six months. The House of Correction has been, at times, *almost empty*; I know not but it is so now. The expense of paupers is greatly diminished.’

‘ Under date of September, 1854, the *Edinburgh News* Commissioner thus writes of Waterville:—

‘ ‘ Ten or eleven years ago the cost of pauperism rose in a manner unaccountable, but for excessive drinking, from 700 dollars to 1800 dollars a year. I am told that this year, with twice the population, the public payments for the poor will not exceed 1000 dollars. *The amount of crime is also greatly lessened*. Those who still deserve the name of drunkards are mostly Irishmen and French Canadians, the latter people having settled somewhat extensively in the northern parts of Maine.’

‘ On the 8th of March, 1852, the Marshal of Gardner reports that ‘ at the commencement of the official term of office, there *were* in the city 14 places where intoxicating liquor was sold; some of them the *habitual resort of drunken, riotous, and disorderly persons*. *But one person has been convicted of drunkenness for the last four months*; but *two* sent to the watch-house for the last six months. The law has been rigidly and *quietly* enforced.’

‘ The Marshal of Augusta reports for 1852 as follows:—

‘ ‘ Augusta had *four* wholesale stores; business worth 200,000 dollars a year;—retail-shops, 25. The city was (officially) *exempted* from the New Law for 60 days; one dealer made a profit of 900 dollars. As soon as the 60 days were out, three

of the wholesale dealers sent off their liquors to New York. The remaining firm persisted in selling, until about 1000 dollars' worth of their liquors was seized. Liquor *may* be sold at the principal hotels, but stealthily: one of the keepers has been twice convicted. The police *used* to be called up 100 nights in a year: *since the passage of the law, they have not been summoned once.*'

'A gentleman well known to the philanthropic world, and who has several times visited the Western hemisphere in the interests of the slave, writes us as follows:—'Near Chelmsford, 8th month 11th, 1856.—Esteemed friend, Dr. Lees. In the early part of the year 1854, whilst travelling in the State of Maine, we came to Augusta, its capital. We were driven through the city in a sledge, by our friend, J. B. Lang, of Vassalboro', who, as we passed along, pointed out to us the city gaol, *the windows of which were boarded up.* 'This,' he said to us, 'is owing to our Maine Law.' I think he remarked, 'It is empty now.' I remain, thy assured friend, JOHN CHANDLER.'

'The Mayor of Bangor, in his Message to the Council, April 22nd, 1852, says:—'On the 1st July, when I gave notice that I should enforce the law, 108 persons were selling liquors here, openly; 20 of them have left the city. Of the remaining 88, not one sells openly.' He furnished the following statistics:—

1850-1.	Inmates of Almshouse and House of Correction	.	.	12,206
1851-2.	Ditto	ditto	ditto	9,192
			Decrease	3,014
1850-1.	Number of public prosecutions	.	.	101
1851-2.	Ditto	ditto	.	58
			Decrease	43
	*	*	*	*

'§ 150. Southward, we pass to MASSACHUSETTS, regretting that want of space compels us to abridge. The Hon. H. W. Bishop, Judge of the Court of Common Pleas, says:—'The violations of *the law itself* add to the criminal business. The operation of this new law has diminished *the other class* VERY MUCH. Crimes of personal violence have *hitherto* constituted *two-thirds* of all our criminal business. Several years will pass before the Courts are satisfied as to the bearing of this new law.'

‘ The Rev. Mr. Seeley, of Springfield, says :—‘ Its beneficial effects are very remarkable. It evidently made a very great change in the moral state of the entire city. Its effects are very marked upon our young men. *Our Lyceum lectures were never half so well attended.*’

‘ Mr. Chapman, Counsellor-at-Law, says :—‘ There is not the one-hundredth part of the drinking in Springfield that there was before the temperance movement commenced. Even those who in their own families use their wine, give their influence in favour of the Maine Law. Assaults were almost always committed under the influence of drink, and already that *class of crime has nearly ceased*. Legal and moral agencies should be combined. They are like the soul and body, and cannot act well separately.’ Mr. Morton, Police Justice, says :—‘ The law has not yet had a fair trial with us. It is a fact that the city is *much more quiet* than it used to be. The police books will give no correct information at present in regard to *drunkenness*, because persons now seen intoxicated are arrested, *which was not the case before*, and persons now *sell* in violation of the law. In this way the criminal business *appears* to have increased, but as the other class of offences, which formerly constituted the chief business of the Police Court, *has almost entirely disappeared*, THIS NEW CLASS WILL SOON BE WORKED OUT. It is a certain fact, that nearly all the 45 cases brought before me during the past month,—January, 1855,—have been *under the new law.*’

‘ In January, 1856, an address of the Temperance State Convention announced that ‘ the law has evidently driven the open liquor trade out of three-fourths of the State. There has been a decrease of 50 criminals in the State Prison.’

‘ In Worcester, the number of commitments for drunkenness, from June to September, was 64 less than in the same months in 1852 ; 106 less than the same in 1850.

‘ The Marshal of Salem reports of the law :—‘ There is a decided improvement in the moral condition of the poorer classes of the community, as the reduced number in the Alms-houses would indicate. There are fewer persons in the Salem Almshouses now, than there have been for eight or ten years past.’

‘ In various parts of the State there have been held musters,

cattle-shows, public celebrations, at which the peace and order have surprised all spectators, and opened a new era in the history of such assemblages. The diminution of arrests for drunkenness was 77 per cent. If there has since been a relapse, it is from no defect in the law; *it was enforced long enough to show its power.*

‘ In the city of LOWELL, according to the Hon. Mr. Huntingdon, the Mayor, for the two months ending September 22nd, 1851, there were committed to the watch-house 110 in a state of drunkenness: there were, besides, reported as being *seen* drunk, not arrested, 390; total, 500. In the corresponding period of the next year, when the law came in force, there were committed to the watch-house for drunkenness, 70; reported as seen drunk, but not arrested, 110; total, 180; *diminution*, 320. The amount of drunkenness for the month ending October 22nd, 1852, was 67 per cent. less than the corresponding months of the previous year.

* * * * *

‘ § 151. Proceed we next to CONNECTICUT.—First, of Hartford, Mr. H. Y. Phelps says (February, 1855):—‘ The fighting and rioting, before so common, have entirely disappeared. Open drinking is stopped.’ Rev. Dr. Clarke says:—‘ The general effects of the law are good: *very* apparent in connexion with our City Mission.’ Chief Justice Williams says:—‘ There *are* more prosecutions for drunkenness. [The fact is,] under the old law, persons drunk were paid no notice to. The practice was growing very bad. Since the 1st of August, 1854, I have not seen more than one or two instances of intemperance in the streets. Several parties have formed clubs, and get their liquors from New York. Judge Bulkeley says:—‘ There is *much less* drunkenness, much less liquor sold now. . It is not sold openly at all, but is driven into secret places. The number of *misdeemeanours* is far less.’ Mr. B. Mann, Counsellor-at-Law, says:—‘ I have been Police Justice here for 20 years, and *I know a very great difference* since the law went into effect. The parties brought before the Court will average 8 out of 10 Irish.’ Mr. L. S. Cowles says:—‘ I have seen ten men drunk before this law passed, for *one* seen since. It was only when a drunken man was making some *assault*, that he was taken up formerly.’ Mr. D. Hawley, City Missionary, says:—‘ I have a

Mission Sabbath School. Since the 1st of August it has *increased one-third*. I have seen in my rounds, wives, mothers, even young women, the worse for liquor—but *all that has changed*; and in my conversations with the poor, many of them say that the law must have come from heaven—it is too good to have been framed by man.' Mr. J. W. Bull says—'*Property-holders* take a deep interest in maintaining the law.'

'Of Hartford, containing 20,000 people, a resident says, he has *not seen a single intoxicated person during the year* !

'The Hartford *Courant* of December 21st, 1854, has the following :—

' July, 1853, Committals to Workhouse	16
July, 1854, ditto	20
August, 1854, ditto	8
August to December, Discharged from the House	23

On September 9th, there was *not a single male person* in the workhouse—which except for two females would have been *tenantless*. There has not been a parallel to this at any season, for eight years at least—how much longer we do not know; but we presume there never was. Is there a sane person who doubts for an instant *what* has caused this result ?

'In Middleton, police expense was reduced by 1200 dollars. For year ending October, 1854, cost of paupers, 2218 dollars; for 1855, 1644 dollars. Vagrancy lessened.

'Rev. J. C. Dickerson, of Plainville, says :—'No open sale. Expenses of town poor considerably diminished.'

'Mr. Freeman, of Haddam village, says :—'Paupers reduced from 10 to 4. Quite an improvement in *the sale of necessary articles* of life.' Mr. Day, of East Haddam, says :—'Drunkenness diminished decidedly. Persons in almshouse, previously, 24; now, 16. No person sent to gaol since the law enacted, six months before.

'Dr. F. Farnsworth, of Norwich, under date of January, 1856, says :—'The amount of disease in poor families is *not one-tenth what it was*; casualties are largely diminished.'

The *Norwich Examiner* gives the following statistics :—

(August 1 to July 31.)	1853-4.	1854-5.	Decrease.
Sent to Norwich Almshouse	61	40	21
Sent to New London County Gaol	220	127	93

Of the 220 cases, 73 were for drunkenness, and four for

selling ; of the 127 cases, 35 were for drunkenness, 2 for getting liquor under false pretences, and 16 for selling : and these cases must obviously, under the continued operation of the law, grow

‘ Small by degrees, and beautifully less.’

‘ *Number in gaol, August 1st, 1855, 16.* Four times as many sellers have been committed the past year as during the previous year ; *but only half as many drunkards.*

‘ *The Home Journal, of July 7th, 1855, says :—*‘ The Maine Liquor Law has ruined the gaol business completely. The gaol at Wyndham is *to be let for a boarding-house.*’

‘ Mayor Brooks, of Bridgport, gives emphatic testimony in favour of the law, in his report to the Common Council. He says that when Mayor, three years ago, he was called up three nights out of five, throughout the entire year, to disperse brawling and noisy mobs. ‘ During the past year, I have not been called upon in a single instance, by the watch at night, to suppress or disperse any assemblage of riotous persons. All this change I attribute to the working of the new Liquor Law. It is a rare sight to see a person drunk in our streets.’

‘ *Chambers’ Edinburgh Journal, January 20, 1855, cites as follows :—*

‘ ‘ On the 1st of August, 1854, the law came into operation in Connecticut, and was carried out in a very stringent manner. A great change was visible immediately after, in Newhaven, the capital. The noisy gangs of rowdies disappeared, and their midnight brawls ceased ; our streets were quiet night and day ; and the most violent opponents of the law said :—‘ If such are the effects of the law, we will oppose it no longer.’ A few persons got intoxicated upon liquor from New York, and were promptly arrested, and fined twenty dollars and costs, which they paid or went to gaol. As to the prisons and almshouses in the various parts of the State, they are getting empty. A large number of our most desperate villains, who formerly kept grog-shops and gambling-houses, have emigrated, finding business so bad. Several who kept *gambling saloons and disorderly houses* in defiance of law, declared that *neither one nor the other can be supported without liquor*, and have moved to New York, where they can continue their infamous business advantageously.’

‘The *Puritan Recorder*, in the spring of 1856, contained a letter, from which we transcribe the following paragraph, showing how the law cherishes charitable feeling and forethought:—

‘‘Another characteristic has marked the past winter. There was less complaint than usual on the part of the poor. *The attention was more awake on the subject*; more had been *contributed and done* to secure the relief needed. The poor more economically husbanded their own resources. The operation of the Maine Law had sensibly counteracted the *sources* of want. These beneficial effects have been perceived to be increasing ever since the law began to take effect. Another fact tells with emphasis. It is the *marked diminution of fires*. Since August 1, 1854, the loss of property from this cause has been *fully one-half less*.’

‘The testimony of the Rev. Leonard Bacon, D.D., Newhaven, will also be read with interest:—

‘‘The operation of the law for one year is a matter of observation to the inhabitants. Its effect in promoting peace, order, quiet, and general prosperity, no man can deny. *Never for twenty years has our city been so quiet and peaceful as under its action*. It is no longer simply a question of temperance, but a Governmental question—one of Legislative foresight and morality.’

‘Rev. Dr. Kennady says:—‘The law has produced the happiest result. A great improvement in *Sabbath School attendance*.’

‘His Excellency Governor Dutton says:—‘At the late State Agricultural Fair it was estimated that, on one day, from 20,000 to 30,000 persons of every condition of life were assembled, *and not a solitary drunkard was seen*—and not the slightest disturbance made. Criminal prosecutions are rapidly diminishing. *The home of the peaceful citizen was never before so secure*.’

‘RHODE ISLAND comes next: where, however, various obstacles have been placed in the way of the enactment. Mr. Barstow, the mayor of Providence, says:—‘After the law had been in operation *three months*, I published statistics, showing that the law, in that short time, had made a reduction of nearly sixty per cent. in our monthly committals, while the

number of insane paupers in Butler's Hospital, was reduced one-fifth.'

	1851.	1852.	Decrease.
Committals to Watch-house for drunkenness and assaults	282	177	105
Committals to County Gaol	161	99	62

'The Hon. W. R. Watson, Secretary of State, says:—

'Its effects, I cannot doubt, have been greatly to diminish crime, pauperism, misery, and that large and dark catalogue of moral, social, and physical evils which result from intemperance. The Sabbath is better observed—the attendance at public worship increased—and individual comfort and public prosperity promoted. It has had to work its way through all the technicalities of the imported English Common Law, and all the delays, quibbles, and subtleties of those whose business it is to interpose between violated laws and merited punishment.'

'§ 153. In VERMONT the law has been still more successful.

'In July, 1853, Mr. L. Underwood, States' Attorney of Chittenden County, wrote from Burlington:—'The law has put an end to drunkenness and crime *almost entirely*. Within this town, from December 1st, 1852, until March 8th, 1853, complaints were made to me, almost daily, for breaches of the peace; and, on investigation, I was satisfied that nine-tenths of the crimes committed during that time were caused by drunkenness. *Since the 8th of March, two complaints only have been made for such offences*, and only one was caused by drunkenness. The law is more popular now than when first enacted.'

'Mr. M. L. Church says (February, 1855):—'I am very much pleased with the law. You might stay here for a month, and you would not see a drunken man in the city.'

'The Grand Jury,' says Mr. J. L. Adams, the County Clerk, 'not composed of friends of the law, in their last report say:—'We feel highly gratified to find *the gaol destitute of inmates*—a circumstance attributable, in a very great measure, we believe, to the suppression of the sale of intoxicating liquors.' Everywhere the law is popular, in proportion as it is carried out.'

'Professor Pease, of Burlington University, says:—'There is a very great diminution in the use of liquors by the students. We have not had, for a year past, any rowdyism.'

‘§ 154. Nor must we forget the last of the New England States that has adopted the Prohibitory Law—NEW HAMPSHIRE—which has been so long the ‘grog-shop’ for the ‘thirsty souls’ of the bordering States.

‘In March, 1856, the *Journal* announces that ‘the Law works admirably in all parts of the State. *Pauperism and crime are almost unknown.*’

‘In June, Rev. E. W. Jackson writes :—‘The Law is accomplishing all that the most sanguine of us expected.’

‘R. R. Brown, hotel-keeper at Carthage, NEW YORK, says that *by abolishing the liquor bar, he is brought in contact with a better class of customers, and all the duties and associations of his business are improved to a degree which affords him a four-fold compensation* for the ‘unprofitable profits’ which arose from vending ‘the drink of the drunkard.’

‘The *Tribune*, INDIANA, publishes the following, in April, 1856. Committed to Penitentiary, five months preceding June, 1855, when the law went into effect, 83. Committed during seven months after, 51—a reduction of 50 per cent. Since the law was annulled by the Court, drinking and gambling have held carnival. The annual Report of the Indiana Hospital for the Insane, out of 910 cases, assigns 59 cases as follows :—Intemperance, 28; dissipation, 9; abuse from drunken husbands, 15; mania à potu, 7. Each inmate, says the *Indianapolis Gazette*, costs 125 dols. a year; so that, for the storage and care of this *one item* of the rumsellers’ harvest, we pay 6125 dollars annually.

‘IOWA.—From this young, but rapidly rising State, a letter from the States’ Attorney, says :—‘*The Prohibitory Law in this State is doing considerable good. It works well. If vigorously carried out it will effect more than all the moral-reform lectures that can be mustered into the service.*’

‘Under a knowledge of such facts as we have detailed, can we wonder at the recent expression of the Rev. John D. Lawyer, Chaplain to the New York State Prison, at Auburn? ‘Give us the Maine Law, and in five years Auburn Prison is no more.’

‘How striking is the remark of the Canadian Commission, Messrs. Ure and Farewell, after their tour through New England and New York :—‘We saw more drinking in the City Hotel,

in Hamilton, in the space of seven minutes, one morning before eight o'clock, than we had seen in all our perambulations through the seven States.''

I may aptly conclude this subject by an extract, showing the effect in Edinburgh of Forbes Mackenzie's Act, prohibiting the sale in Scotland of intoxicating liquors on the Sunday.

From the 'Edinburgh News' of January 10th, 1857.

'As drink is the fountain of nearly all crime in Edinburgh, we must show that as drunkenness decreases so crime diminishes. The Forbes Mackenzie Act, and its effects, will no doubt be ridiculed by the publicans and their organs; but if we can show that crime diminishes along with drunkenness, it will be for doubters to show any more reasonable cause for the remarkable amendment. In Sunday cases, the number is slightly increased last year over 1855, and this is accounted for by the notorious relaxation of the Act in certain localities.

'Number of Cases on Sundays.

	1852.	1853.	1854.	1855.	1856.
Cases taken to the Police-office and Station-houses for protection . .	729	641	455	389	446
Cases of parties Drunk when apprehended for offences	623	664	423	379	333
Total	1352	1305	878	768	779

'Number of Cases from Eight o'clock on the Sunday mornings till Eight o'clock on the Monday mornings.

	1852.	1853.	1854.	1855.	1856.
Cases taken to the Police-office and Station-houses for protection . .	401	333	176	82	119
Cases of parties Drunk when apprehended for offences	308	315	165	61	66
Total	709	648	341	143	185

'But even with the relaxation, which will now be at an end, the number of 185 persons, drunk in 1856 under the Act, compares most favourably with the 709 Sunday drunkards found by the police before the Act was brought into operation. But that general crime follows the ratio of general drunkenness is demonstrated by the more general tables. The number of persons

found drunk, whether charged with special crimes or not, were—

1852.	1853.	1854.	1855.	1856.
9767	9730	8749	8095	7736

And about one-half of these were charged with crimes, the other taken to the police-office for protection. Contrast these figures with the number of persons brought under the cognizance of the police, and it will be seen that just as drunkenness declines, so those brought under the notice of the police are diminished. The gross number of persons taken cognizance of by the police were—

1852.	1853.	1854.	1855.	1856.
18,932	18,300	15,749	15,320	14,353

So that, in 1852, while there were 7962 drunkards, there were 18,932 required to be looked after by the police; so, when in 1856, the public drunkards had diminished to 7736, the persons to be looked after fell to 14,353—a fact which goes to show that drunkards not only require looking after themselves, but that every two drunkards increases by four those whom the police require to watch or apprehend. This shows, beyond all doubt, the effect of drink in the production of crime, and ought to convince all unblinded by interest or love of intoxicants, that the temperance reformer is a true regenerator of his country.

‘ After the passing of the Forbes Mackenzie Act, it was often asserted that, although the working classes were prevented drinking on Sunday, they would make up for that by increased drunkenness on Saturday and Monday; and we know individual cases where workmen have been open to this charge. But that these cases are exceptional, while the general rule is in favour of increased Saturday and Monday sobriety, the following figures abundantly demonstrate. On Saturdays the numbers were—

1852.	1853.	1854.	1855.	1856.
1933	1879	1853	1783	1744

On Monday, however, the figures are even more encouraging, showing what we, and all who have any knowledge of the habits of working men, always declared, that the most dangerous temptation to a debauch was the Monday morning dram; and since the public-houses have not opened till eight o'clock, the

effects are most conspicuous on Monday sobriety, the numbers of Monday drunkards being—

1852.	1853.	1854.	1855.	1856.
1169	1136	1164	1038	852

This is most encouraging progress in the right direction; and we shall conclude our review of the diminishing drunkenness and crime of last year, as compared with former years, by asking the earnest attention of all parties to the facts thus given. These are worth volumes of arguments, and any amount of interested abuse or distorted ingenuities; and an Act that exists under such favourable coincidences, if you will, but we say which produces such favourable results as these, will not be easily blotted from the statute-book.'

[Communicated by Mr. Duncan M'Laren, who guarantees its accuracy.]

MARCH, 1857.—The Journal of the Statistical Society for this month contains a paper by Professor Walsh, of Dublin University, the eminent Political Economist, opposed to the views—or what he considers the views—propounded by Mr. Clay. 'A theory has lately grown up,' says the Doctor, 'that when the people suffer privation they refrain from crime, but fall into excesses when prosperity returns. This notion, opposed to the *malesuada fames* of the poet, is based on some criminal statistics, principally composed of the records of summary convictions in a few localities.' *

I am not aware that this general proposition has been laid down by any writer; certainly not by Mr. Clay, who, though not mentioned, is obviously pointed at by Dr. Walsh. Neither has Mr. Clay fallen into the error of depending simply upon summary convictions for petty offences, as the reader has already seen. The apparent difference of opinion between these two able writers, may perhaps be adjusted by taking into account that, as regards crime, opposite causes will sometimes produce identical effects. Hard times create forced idleness and destitution; my experience, however, leads me to the opinion that the latter, taken as a motive to crime, is greatly overrated. I

* *Journal of the Statistical Society of London*, Vol. xx., Part i., p. 77. March, 1857.

could almost count on my fingers all the cases which have fallen under my observation, either at the Bar or on the Bench, of crimes originating in the pressure of want. Still the idleness and destitution which are the natural offspring of adversity, are undoubted incentives to crime. But these incentives may also have their origin in sudden prosperity loosening the bands of self-control, and inveigling the population enjoying it, or suffering from it—whichever expression best accords with the truth—into extravagance, and impatience of labour—impatience of labour leading to idleness, and, when combined with extravagance, to destitution. But as great prosperity is rarely diffused on the sudden among the lower classes, except in the seats of a few manufactures, it is to be expected—taking the whole nation as the basis of comparison—that prosperity will be less productive of crime than its opposite; and the Professor is supported by the tables in drawing this conclusion.

CHARGE OF APRIL, 1855.

From the 'Midland Counties Herald,' April 12, 1855.

AT a Sessions held on the 9th of April, the Recorder thus addressed the Grand Jury :—

GENTLEMEN—

It is characteristic of the present age that no institution of the country is held to be so hallowed by time as to be exempt from scrutiny; for although it may have been sufficient for its purpose at the date of its origin, changes in the structure of society and in other portions of our state machinery, may have rendered its continuance inexpedient. Or, if its retention be desirable at all, it may only be desirable after great modifications shall have been made, to bring the old institution into harmony with the new arrangements with which it has become associated. Recent events, which are so deeply impressed on our minds that the slightest allusion brings them before us with painful vividness, must have a strong tendency to aggravate that desire for changes which had, perhaps, become sufficiently intense without the aid of such a stimulus. Gentlemen, I should belie the tenor of my whole life, if I were to undervalue the advantage of adapting our institutions to the progress of human affairs, or to doubt the necessity for such adjustments. If, from a superstitious fear of innovation we do not advance, we must for all practical purposes fall back. Of the arguments against novelties, Lord Bacon says, 'All this is true, if time stood still; which, contrariwise, moveth so round, that a froward retention of custom is as turbulent a thing as an innovation; and they that reverence too much old times are but a scorn to the new.' But then he calls upon us 'to beware that it be the reformation that draweth on the change; and not the desire of change that pretendeth the reformation.' These, Gentlemen, are golden words; and in the present excited state of the nation cannot be read too often, or pondered with too much care. Changes are inevitable, but let them be made cautiously, I might almost say

tenderly, and with anxious discrimination. In what belongs to this world, the maxim that 'whatever is, is right,' must always be a pernicious error; but the public mind, when inflamed, sometimes acts upon a worse; and if not in terms, yet in deeds, pronounces that 'whatever is, is wrong.'

Gentlemen, we should read the signs of the times with but little attention, if we did not perceive that the venerable institution of the Grand Jury, of which you are to-day the living representatives, is about to take its trial; and that charges are made against it which may lead rather to its destruction than to its improvement. It has not infrequently happened in London, that gentlemen filling the position which you here occupy, have denounced Grand Juries, and called for their abolition; and Bills have from time to time been introduced into Parliament, under high sanction, framed in the same spirit; which, although they were limited to the metropolis, could hardly have remained so restricted in their application, for any great length of time. Being of opinion myself that much alteration in the functions of the Grand Jury is imperatively called for, and being also very strongly of opinion that these functions ought to be reformed, and not swept away, I proceed at once to treat in their order both branches of this proposition.

It will probably suffice to raise in your minds a presumption that modifications must be required, when I state that the duties of the Grand Jury, as prescribed by the law, are at the present day precisely what they were many centuries ago. It would, however, be rash to innovate on merely presumptive arguments. I must, therefore, ask your permission to go somewhat into detail.

In early times, Gentlemen, an injured party did not apply to a Justice of the Peace, for the best of all reasons—there was no such minister of the law in existence. He waited until the time came round for assembling a Grand Jury; made his complaint to that body, who, if he established his case to their satisfaction, presented to the Court to which they were attached an indictment against the party accused; and this indictment, so found, became an authority by which the Court was empowered to issue its warrant for apprehending the defendant. At first sight, it would appear difficult to comprehend how society could hold together, when criminals had so great a privilege as impunity from restraint until a bill was found against them by a

Grand Jury ; and, certainly, if no better provision had since come into existence for ensuring the attendance of the accused at the hour of trial, than that which satisfied our ancestors in the primitive times of which I am speaking, we should find the number of absentees very considerable. Circumstances, Gentlemen, arising out of habits, manners, laws, and indeed the composition of society itself, mitigated, to our early forefathers, an evil which we should find intolerable. To lay these before you at length would demand a volume. Suffice it, therefore, to state, in general terms, that every member of the community was retained in his position in life, and for the most part in the district in which he was born, by motives, many of which have ceased to operate ; and that to be an exile or outlaw was a calamity far greater with them than it is with us. Moreover, the juries of numerous local courts exercised the right of finding bills of indictment against criminals ; so that the intervals between the offence and its prosecution, were shorter than we should find them, if deprived of our recourse to the Justice of the Peace.

The jurisdiction of this valuable and important magistrate has grown up slowly. It has been partly derived from statutes which have been accumulating on this branch of our jurisprudence for at least five centuries ; but at first it owed its principal increase to usurpations, tolerated from the necessity of the case, and from the weakness of the class chiefly obnoxious to the exercise of this vigour beyond the law ; until they had ceased to be novelties, and had become too well established by usage to be successfully opposed.

Thus, Gentlemen, by slow degrees, a tribunal gathered strength which, taking cognizance of offenders immediately on their detection, and by such promptitude guarding against their flight from justice, could not fail of being brought into extensive operation. But, as I have said, its rise was slow. Hence, probably, it was, that the stages of its progress were unmarked by the public and the Legislature. Otherwise, it is difficult to account for the curious fact, that the onerous duties of that preliminary investigation which has for its object to determine whether or not there is sufficient evidence against the accused to put him upon his trial, should have continued for ages to be performed twice over ; first by the Justice of the Peace, and again

by the Grand Jury. Some weight must, no doubt, be given to the wholesome attachment of Englishmen to their ancient constitutional courts; and to their reliance on the protection of Grand Juries against false and oppressive accusations. But, making all reasonable allowance for these motives, they will scarcely account for the burthen having been so long and so patiently endured.

In our own times I may say, without the slightest disparagement of the gentlemen on whom the duty is cast, that Grand Juries are called upon to repeat the inquiry already made before the committing magistrate, under almost every conceivable disadvantage. They hear the witnesses in secret, who may, therefore, in comparative safety, withhold or pervert the truth; and thus, in the metropolis, it is found that whenever evidence is bought off, the scene of perjury is neither the police-office nor the sessions court,—where the witnesses must speak under the check of publicity,—it is laid in the chamber of the Grand Jury. Hence, this body is called ‘the first hope of the London thief.’ Another source of miscarriage is that the Grand Jury is led into errors of law, for want of legal advice. The Judge of the Court to which they are attached is, no doubt, ready, at every moment, to render his aid in cases of difficulty; but it is, I presume, felt that frequent reference to him would inconveniently arrest proceedings, and, consequently, it is not often made. Let me, Gentlemen, avail myself of this opportunity to assure you that I shall always be ready to give you my best assistance; and shall think little of any interruption so fully justified by its cause. Another difficulty arises from the Grand Jury being left without instructions as to what facts the witnesses are coming to prove. How, Gentlemen, you make your way among these various impediments, and perform your task with so little damage to the interests of justice, I am not quite able to explain; but most assuredly, the praise of doing less harm than might reasonably be expected, is the only compliment which existing arrangements permit me to offer for your acceptance.

Perhaps it will enable me to place the defects of the present system in a clear light, if we imagine Grand Juries to have been instituted after, instead of before, Justices of the Peace. Suppose it had been alleged that the inquiry before the magistrate, which precedes a commitment, was insufficient for

the due protection of the accused; and that the second inquiry by you, conducted as it now is, had been suggested as an additional safeguard. Is it possible, Gentlemen, that the Legislature could adopt such an expedient? Is it not obvious that the main injury resulting from a commitment which ought not to have been made, is the imprisonment before trial to which the accused is thereby subjected. Surely, when this injury has been consummated, it is a poor and equivocal benefit to an innocent prisoner, to discharge him without that public investigation by which alone his innocence can be manifested to the world; exposing him by such a course to all the doubts and misgivings incident to every decision arrived at in secret, but attaching itself, in an especial manner, to one, subject to so many liabilities to error, as you have seen belong to inquiries before a Grand Jury. Nor must I omit to remark, that this relief to the prisoner,—if such it is to be called,—is attained by overruling the conclusion arrived at after a public inquiry. Gentlemen, I feel certain that if you or I were unjustly charged with a crime, upon evidence which had induced a magistrate to send us to the bar—evidence which, according to modern usage, is printed in the newspapers—we should desire a trial as public as that preliminary examination; so that all men might not only know that we were acquitted, but be in possession of the grounds on which we had met and defeated the charge. We should also desire that the proofs of our innocence should be as widely diffused as the allegations of our guilt.

Second to the considerations to which I have called your attention, but still of no mean importance in itself, is the tax on the time of witnesses, caused by the additional inquiry before the Grand Jury. In every case prosecuted, three attendances are necessary; and it may so happen that each one involves the witness in loss or inconvenience, but poorly compensated by his pecuniary allowance; which allowance, indeed, will remind you that each attendance is not only a private inconvenience, but a burthen on the public fund out of which the costs are defrayed. Again, the greater the number of attendances required, the greater the chance of absence; and, by consequence, of miscarriage in the conviction of offenders.

In these happy times, Gentlemen, when we can repose with confidence on the desire of the administrators of our laws to

do justice, I am utterly unaware of any valid benefits to be weighed in the balance, against the various mischiefs which I have pointed out to you, as resulting from the employment of Grand Juries to revise the decisions of committing magistrates; and consequently I am prepared to see your jurisdiction over cases sent to trial by Justices of the Peace, ancient as it is, brought at once and for ever to an end.

But, Gentlemen, let me call your attention to another grievance. There is no legal necessity that a case should be carried before a Justice of the Peace at all. The prosecutor may wait until the Grand Jury is assembled; and then, without notice to the accused, he may present a bill against him, support it by secret evidence, and when it is found by the Grand Jury, he may sue out a Bench warrant, apprehend the defendant, and put him under the necessity of either going to prison until the time of trial shall arrive, or of finding sufficient bail to ensure his appearance at the bar. And it not seldom occurs that, when the prosecutor has a sinister object in view in preferring a charge against his neighbour, he takes this mode of gratifying his malice; thus placing the accused under the cloud of suspicion which must hang over every man against whom a bill of indictment has been found, during the whole interval which precedes his opportunity of clearing himself, by the publicity of a trial before the Petit Jury; where, for the first time, his witnesses will be heard. Again, it has sometimes happened that the prosecutor has presumed upon what he knew to be the prejudices of a Grand Jury, secure that their prepossessions would not be removed by the arguments of counsel, or dissipated by the summing-up of the Judge. A notable instance in point will be found in a recent speech in the House of Lords by our great leader in law reform, the revered Lord Brougham; who calls for various changes in our Criminal Procedure; and, among others, for several in the jurisdiction of Grand Juries. 'I recollect,' says he, 'being Counsel, one of the last times I ever attended the Criminal Court, for a gentleman of great property and high respectability,—a man of 10,000*l.* or 12,000*l.* a-year,—who stood in the dock, and was arraigned for wilful murder, because the Grand Jury sagaciously deemed him criminally accountable for the neglect of one of his bailiffs, who had thrown a rope across a road that was under repair, and forgot

to put a lantern upon it; so that, unfortunately, a woman coming from market was thrown from her cart, and broke her neck. The instant that Mr. Baron Wood heard the case opened he directed an acquittal, of course; and desired the officer of the Court to summon the Grand Jury into his presence. They were discharged, and his lordship said, 'I am extremely sorry for it; this is a most shameful case.' The Jury were not, however, rebuked; but had they been so, the censure would have fallen exceedingly light, because no one could possibly tell which of them had agreed in finding the bill. Here, however, was this respectable man, who had held up an arraigned hand in the dock with felons, and who went down to the grave with the stigma which any spiteful neighbour or adversary at an election or in the heat of religious controversy—for he was a Roman Catholic—could fling in his teeth, that he had once stood his trial for murder.' In this case, Gentlemen, it is evident that the Grand Jury, uncorrected in their view of the law, and stimulated perhaps by religious animosity, perpetrated a wrong so monstrous as not to be credible, except on such high testimony as that by which it is proved.

Now, Gentlemen, while I would not prevent a complainant who had brought his accusation before a magistrate, and had failed in obtaining a commitment of the accused, from again preferring his complaint before a Grand Jury, I would assimilate the proceedings in their chamber to those in the police-court. Let the investigation be public; let the accused have the benefit of legal assistance, and let him have the right of adducing evidence in his defence. If, after thus hearing the whole case, a Grand Jury should be of opinion that it ought to be sent to trial, the accused would have no just ground for dissatisfaction; and as the trial might quickly be had, the hardship upon him if the ultimate result should be an acquittal, would be reduced to the smallest possible amount. Gentlemen, it must be obvious to all who have had much experience in criminal courts, that the class of cases to which I have just called your attention would be extremely rare; and if the changes which I propose were adopted, your functions, as they are at present exercised, would be all but annihilated. The question, then, would arise as to whether what would still remain, would justify our calling you from your homes and affairs, to give your attendance in our

courts. Certainly, if I had enumerated all your duties, you ought not to be summoned, except where notice had been given that a case would be presented to you, which a Justice of the Peace had refused to send to trial. But, Gentlemen, I would release you from labours, in the performance of which you can scarcely be useful to your country, while you may be the cause of much injury,—not with a view of dispensing with your valuable assistance,—but to employ you upon inquiries in which your aid and sanction might confer signal benefits on the public.

It will not be supposed that one who, like myself, belongs to the official class of the community, would undervalue the merits of the order of which he is a member. Still I cannot but feel, that although in so advanced a stage of civilization as that at which we have now arrived, the labours of persons unskilled by training must in many departments of the public service be little better than useless, nevertheless the official mind is liable to certain disqualifications, which do not attach themselves to citizens who, like you, are selected at the moment from a wide circle; and who return again into the society from which you came, without having had time to acquire official habits. There is a keenness and freshness of perception about you, which with us is often worn out. Let me give an instance which occurred in this Court some years ago. A prison then existed not far from the place at which we are assembled, for the detention of debtors sent there by the Court of Requests; and inasmuch as the jurisdiction of that Court did not extend beyond 5*l.*, it is easy to see that this was a prison for the poor—and for the poor alone—which perhaps may account for its escaping the observation of the classes who would have had sufficient influence to prevent the scandal to which I am about to direct your attention. It so happened that a riot broke out within the walls of the prison, in which the turnkey was roughly handled; and the offenders were indicted in this Court for assaulting him. Their trial led to a disclosure, which showed into what a miserable and disgraceful state the gaol had been permitted to fall. This disclosure filled the jury, and indeed all who heard the case, with disgust and indignation. The sentiments of the auditory spread through the town, and quickly reached the Commissioners of the Court, in which body the

management of the prison was vested; and with great promptitude they commenced alterations at a large expense, by which the evil and the opprobrium were both removed. Gentlemen, I knew that the prison must have been visited by the Inspector, and I was curious to ascertain what had been his report. I found it in print; and it was such as most assuredly ought to have engaged the attention of those whose duty it was to turn the labours of the Inspectors and the contents of their blue books, to account. Overwhelmed, however, with business, and their minds jaded, and made to a certain extent indifferent by the multitude of claims upon their attention, they had suffered the evil to continue untouched; and, but for the circumstances just narrated, it probably would have remained utterly neglected and unredressed until the extinction of the Court, which afterwards took place. Again, a few months ago, a case was brought before this Court, in which it was proved that, during a very long period, a yard in this town, used for the slaughtering of horses, had been suffered to exist in a most revolting state of filth; diffusing its poisonous exhalations through the neighbourhood, and carrying sickness and death into many a family—effects which had been made the subject of complaint to official persons, whose motions, however, were so sluggish that years elapsed before any step was taken to protect the unhappy sufferers against the continuance of their wrongs. Now, Gentlemen, it occurs to me that if men like yourselves, who, collected from all parts of the town, must, some or other of you, be cognizant of whatever occurs among us, were relieved from the drudgery to which I have adverted—a drudgery, like that of the treadmill, at once monotonous, toilsome, and useless, engrossing your time and exhausting your strength—so that you might have leisure for inquiries like those to which I point;—if, I say, you were relieved from this irksome duty, we might have, through your means, a flood of light thrown upon all the dark spots in the Borough; and might bring the force of general opinion to act with us in removing whatever is injurious or discreditable, in the town in which we perform our respective duties. Nor would your attention, Gentlemen, be confined to painful or invidious tasks. It would be your privilege to suggest various useful undertakings; as wants may arise in our constantly advancing progress. Gentlemen, I hold in my hand a

report of the presentment of a Grand Jury in the city of Philadelphia ; the capital, as you know, of the important State of Pennsylvania. It relates to their House of Refuge ; a noble institution, which has now been for many years very successful in reforming youthful offenders of both sexes. Their language is as follows :—‘ Few charities, as the Grand Inquest believe, have higher claims on the public, and few, perhaps, will be more permanently useful, than the House of Refuge. Here the misguided and neglected, rather than guilty child, will find an abode where religious and moral principles and industrious habits will be inculcated ; where virtue will be cherished, and vice repressed. When the pupil leaves the institution, it is to be hoped he will go forth into the world, with such a character for honesty and integrity, as may lead the virtuous portion of society to receive him among them. Instead of being a weight upon the community, supported either in our gaols or almshouses, he will be enabled to bear his part of the public burthens.’ These sentiments, Gentlemen, are admirable ; and I trust you will agree with me, that your time and attention would be far better employed, on the inquiries and discussions which must have preceded such a presentment as that of the Grand Jury of Philadelphia, than in revising (and revising, as it were, in the dark) decisions which the justices have arrived at, aided by means for discovering the truth, from the employment of which you are shut out. You cannot but feel, Gentlemen, that it would be a privilege, and not a burthen, to be called upon to exercise your minds upon the many important questions, which would suggest themselves as proper to engage your deliberations. And the conclusions at which, after careful investigation of the facts and the reasons which led to them, you should arrive, would have great weight with your fellow-townsmen, and lead to many a valuable result.

In my first address from this Bench to a Grand Jury of Birmingham, I used these words :—‘ Although the original utility of the Grand Jury may have decreased, or even passed away, it is nevertheless an institution of great importance ; it is of the genius of our constitution to interest and employ all ranks and conditions of men, in the administration of justice. By this provision courts are made really public ; not only as they are open to all to become auditors, but inasmuch

as the representatives of the various classes are called upon to give their attendance. In an assembly so collected, you have a right to be heard. You have a right to address to the Bench any matter connected with the administration of the law, which in your opinion requires public animadversion; and your suggestions will be in this Court, as they are in all others, received with respect. It is through you, also, that the Bench addresses the public at large; knowing that what you consider worthy of your attention, will be treated with deference by all those whose duties or interests are involved in what is laid before you.' Gentlemen, sixteen years of experience have not shaken my belief in the truth of this representation. The advantage of intercommunication between the men of office and those who are chosen for the moment, and for the moment only, from among their fellow-citizens, may be followed by profitable results; while, on the other hand, they can scarcely lead to any abuse. The suggestions thrown out on either side have no power of themselves; but if they are adopted by those who become acquainted with them, they affect more or less the public opinion of the nation; and if they will bear the test of scrutiny, they will at length find entrance into the statutes of the realm. But if they should turn out to be unfounded in fact, or untenable in argument, they die away and are forgotten. In this latter instance, we may be employing to little purpose a portion of our time; but that appears to be the limit of any inconvenience which the intercourse between Courts and Grand Juries is likely to produce. Thus there is nothing to put into the balance, against the weighty benefits which may arise from these reciprocal communications.

The Foreman of the Grand Jury, on the conclusion of their duties, read the following observations:—'Before we retire, sir, permit us to express the pleasure we felt in listening to your opening address—an address characterised by the same clearness and distinctness, the same large and expansive views, the same benevolence and philanthropic feeling, which have been embodied in all that we have heard or read of yours, and which have been so nobly illustrated by you in practice. With regard to the observations made relative to the inutility of Grand Juries, we perfectly agree that there may have been a time when

Grand Juries were thought necessary, and indeed were so ; when party spirit, bigotry, and intolerance ran so high that ignorance and unqualified presumption were elevated most unworthily to the bench ; but that day is past, and the selection of magistrates is at the present time generally the preference of ability and intelligence, which would scorn to lend themselves to the abuse of power for the advantage of any sect or clique ; in addition to which, the influence of the press, and the diffusion of information, is so general, as to exercise a salutary restraint against the abuse of power. The office of the Grand Jury appears to us to be to judge more of the wisdom and prudence of the magistrate in committing, than of the merits of the case ; and to be useless as regards the relief afforded to the prisoner. The bill of indictment is not brought before the Grand Jury until a few hours, perhaps minutes, before the prisoner is called upon to take his public trial ; therefore, as stated by you, sir, if the bill is ignored, relief is not afforded until the injury has been inflicted. Under these circumstances, we consider the institution useless and effete, occasioning to gentlemen called upon to undertake duties (merely futile) a loss of valuable time, which should be, either privately or publicly, more profitably employed.

‘ The Jury regret to observe the number of cases brought before them in consequence of the injudicious exposure of goods outside the shop-fronts ; being a temptation to crime, and a pernicious practice, which they most strongly condemn.’

The Recorder thanked the gentlemen for their kind appreciation of his Charge ; telling them at the same time that he understood their disapprobation of the employment of Grand Juries to apply only to their revision of cases sent to trial by the magistrates, and that it did not extend to the institution itself ; to which qualification they assented.

‘ Recent events’ * * * ‘ must have a strong tendency to aggravate that desire for changes, which had, perhaps, become sufficiently intense without the aid of such a stimulus.’

Allusion is here made to the eager demand for changes in the administration of military affairs, which the sufferings of our Army in the Crimea, during the winter of 1854-5, had called

forth. This has now happily subsided into a calm but earnest desire for gradual and well-considered ameliorations in a department, the importance of which to the safety and honour of the country can scarcely be over-estimated.—*May, 1856.*

The following brief tract, from the pen of Mr. Oakley, the Governor of the Somerset Gaol, was circulated among the Magistrates of the County, in the year 1853. As embodying the suggestions of an intelligent person, of much experience, I have thought it advisable to insert it in this place.

‘ Observations on the Grand Jury System ; with Suggestions for Simplifying Proceedings on Criminal Trials.

‘ Although desirous of speaking with all due respect of the gentlemen composing Grand Juries, both at Assizes and Quarter Sessions, there are many instances of justice having been perverted by the evidence taken before them. True bills have been returned in cases that had not been previously investigated before a magistrate ; and at the trials, the judges have been known to declare that the accusations were entirely unsubstantiated. Bills in other cases have been ignored in consequence of witnesses having, either from ignorance or deficiency of memory, omitted important facts. The same result has followed where witnesses, from collusion with the friends of prisoners, have wilfully misstated their evidence.

‘ In one case, where a tradesman was charged at the sessions with receiving stolen goods, some members of the Grand Jury were so much interested, that the bill was ignored, although the clearest evidence was offered against him ; and, immediately they came to a decision, the foreman rushed from the room and congratulated the prisoner.

‘ The most serious evil, however, under the present Grand Jury system is the inducement held out to prosecutors, witnesses, and constables (particularly the latter), to strain or exceed the true evidence, in order to obtain the committal of a prisoner, and thus to secure payment of their own expenses. The constable, besides the sum granted for attending the magistrates, and for pursuing and apprehending the prisoner, has a liberal allowance for conveying to gaol.

‘ In London, an officer of the Court attends with the deposi-

tions before the Grand Jury, and thus false evidence is, to some extent, prevented. But in the country, particularly in counties, where only one witness at a time is called before the Grand Jury, there are no means of testing the evidence of a witness, and no protection for persons against whom indictments are improperly and unjustly preferred. Notes of the evidence are not systematically or regularly taken, and therefore false witnesses escape the punishment they deserve, and the valuable time of gentlemen, selected from the higher grades of society, is uselessly wasted, and often injuriously employed.

' It is suggested :

' That it should be considered by Parliament whether, with the improvements effected by the Administration of Justice Act, and the publicity and care with which examinations before magistrates are now conducted, any tribunal is necessary between the committing magistrate and the trial.

' Should it be determined that an intermediate tribunal is to exist, then,—as the attendance of the magistrates at assizes will always be necessary for performance of duties unconnected with bills of indictment,—a board of five or seven magistrates might inspect such depositions returned by the committing magistrate, as may be referred to the board by the judge, without the attendance of those witnesses whose depositions have been taken ; and might examine, in presence of the prisoner, any additional witnesses called for the prosecution, and thereupon report to the Court the names of the prisoners who should be put on their trial. This would obviously be a less expensive course than the present, and would obviate most of the evils already pointed out, and Grand Juries at Sessions might be entirely abolished.

' The excellent Act for the Administration of Justice, commonly called Jervis' Act (11 & 12 Vic., cap. 42), has supplied nearly every requirement up to the committal of prisoners for trial ; but after that proceeding great improvement is required, and might be easily effected.

' The law now permits almost any alteration in indictments with the sanction of the Judge in Court ; and indictments, therefore, might be altogether abolished. By the magistrates' clerks being required to prepare the commitment in each case, so that a proper statement of the charge against every prisoner may

appear in the gaol calendar, all the information necessary as to the charge would be afforded.

‘ The Clerk of the Court, having a record book before him in Court, should enter the charge against each prisoner as he comes up for trial; the name of each witness as called; the verdict when given; and sentence when passed. This would be much more simple, and ensure greater correctness than the present bills of indictment.

‘ The abolition of Grand Juries would dispose of the only real obstacle to more frequent gaol deliveries, and would ensure the attendance of more intelligent petty jurors,—in fact, all but magistrates and others legally exempt. If the jury, at the opening of the Court each day, were sworn to ‘ well and truly try’ all the prisoners whom they may have in charge during the day, it would save much valuable time; besides obviating the great injustice and risk of contamination in herding together a number of prisoners of all classes, male and female, old and young, innocent and guilty, as now brought in a drove together to the prisoner’s dock. The effects of this evil system can only be imagined by those who have watched its consequences.

‘ In order to reserve to prisoners the right of challenging, a list of the jurymen should be read over to them a certain time before trial.

‘ Instead of calling on a prisoner to plead, and, by requiring him to utter the words ‘ Not guilty,’ obliging him to add a lie to his offence, the trial might be commenced by reading a certificate from the committing magistrate, stating the charge; and that he had, in compliance with the ‘ Administration of Justice Acts,’ explained it to the prisoner, and asked him whether he had anything to say in answer to it.

‘ In all cases where a prisoner has confessed himself guilty before the committing magistrate, the expense and inconvenience of requiring the attendance of prosecutors and witnesses might be dispensed with, by calling the person who apprehended the prisoner to prove identity. The Judge having the depositions, is in possession of every fact, and a prisoner who, after confessing before the magistrates, desires to be tried, may be remanded to the next assizes or sessions.

‘ Employment should be provided, or a refuge established, for prisoners who, on their discharge from gaol, are willing to

work. This seems to have been contemplated by 4 Geo. IV., cap. 64, sec. 39, which states, 'Prisoners discharged from prison should be supplied with the means of returning to their families, or to some place of employment, where they may be engaged in a life of honest labour for their maintenance, and prevented from pursuing evil courses.' In many instances where employment has been obtained for prisoners on their discharge from gaol, they have afterwards done well; and at least fifteen out of every twenty prisoners committed for second offences, are believed to have been guilty of them, because, having been once convicted, the hope of getting honest employment for the future is gone. They have no opportunity to regain their characters, or avoid starvation. There is no provision for ordinary labour in union houses, and able-bodied men, willing to work, will not go to them.

'A very small contribution from county rates to an establishment that would soon, probably, be self-supporting, might prevent much crime, and save large sums now expended in prosecuting and punishing offenders.

'A certain portion of the population will exist by plunder; and these can only be thoroughly checked by an efficient and uniform system of police. But the simple alterations herein suggested, would effect great saving of expense in prosecutions; prevent the loss of much valuable time; and the re-committal of many prisoners who might, under more favourable circumstances, have become useful members of society.

'The amendments proposed on the present mode of procedure on criminal trials, may be thus summed up:—

'1st. A Board of five or seven magistrates, to inspect depositions referred to them by the Judge at Assizes, or Chairman at Quarter Sessions; to examine any additional witnesses in presence of the prisoner; and to report to the Court if the prisoner should be put on trial.

'2nd. More frequent gaol deliveries.

'3rd. Better gaol calendars, to supersede bills of indictment; and a book of records, to be kept by the Clerk of the Court, wherein to enter the charge against the prisoner; the names of witnesses; the verdict and sentence.

'4th. The Jury to be sworn only once; the prisoner's right of challenge to be preserved.

‘ 5th. The prisoner not to be called on to plead.

‘ 6th. Where prisoners have confessed, the expense of prosecutors and witnesses to be saved.

‘ 7th. Employment to be provided for discharged prisoners.’

The evils arising from the intermingling of prisoners brought from the prison to the court, and awaiting their trial, are not confined to Taunton. We suffer very much from the same cause at Birmingham. It may be added, that if the commitment by the magistrate stood in the place of a true bill found by a Grand Jury, the time of witnesses attending trials would be much economized, and their convenience very materially consulted, by an arrangement which would naturally follow such a change. The calendar would become a cause list, and the order of trial of each prisoner would be known. The judge would probably direct notice to be given of the number of cases which would be considered as standing for trial on each day; so that where the calendar was long, the witnesses in the cases low down upon the list would not be required to attend on the first or early days of the assizes or sessions.

SEQUEL.

DISGRACEFUL STATE OF THE PRISON ATTACHED TO THE COURT OF REQUESTS.

I SUBJOIN the description of this gaol, given by the Inspector of Prisons in his Report for the year 1841 :—

‘ Birmingham Debtors’ Gaol.

‘ There is only one yard here for the use of the poor debtors, of the insolvent debtors, and of the female debtors. The poor debtors usually take exercise only once a-week in the yard, on account of its being occupied at other times by the insolvent debtors. The poor debtors may walk there, however, for an hour or so at other times, if they make application. I found three female debtors sitting in the day-room of the insolvent debtors, in company with the male insolvent debtors. There

appears to be no separation of the sexes, except at night. Most of the prisoners sleep two in a bed ; but this practice might be obviated by providing several small light iron bedsteads suited for one occupant only. In one large room there are two rows of wooden bedsteads, each row composed of one continuous wood-work, and these bedsteads were covered with straw. Only one prisoner of the whole number stated to me that he was unwell. The keeper has it not in his power to improve matters much ; his salary is 60*l.* a-year, and no assistance is provided for him except at his own expense. The keeper would be glad to receive a complete set of printed rules for his guidance ; but as the prison is at present constituted—so scanty in its accommodation, and with only one officer—even the best set of rules would prove unavailing, and would be set at defiance. In fact, no means exist here of enforcing them. In September, 1840, I found here twenty-two inmates, of whom four were women. The average number is twenty ; the greatest number since my visit at one time has been twenty-four or twenty-five. All the prisoners are sent from the Court of Requests. There has been no escape, no death, and no case of severe illness, during the last two years. On the whole, the building is dilapidated and neglected, and nothing can be said in commendation of its order or cleanliness.*

This report, though printed for the use of both Houses of Parliament and the public, seems to have attracted no attention. The following letter will show the condition of the gaol in the month of January, 1844 :—

‘ 44, Chancery-lane, January 12, 1844.

‘ SIR,—On the trial of an indictment against two prisoners for debt, in the gaol of the Court of Requests for the town of Birmingham, which took place before me at the late sessions for the Borough, and on which they were convicted of assaulting a peace-officer sent into the gaol to quell a riot—it appeared in evidence that the prison was in a most unsatisfactory state, both with regard to the morals and to the comforts of the prisoners ; and I verified the statements of the witnesses by a visit I made to the gaol the day but one following the trial. The day-rooms

* *Sixth Report of Inspectors of Prisons.* III. *Southern and Western District*, pp. 231-2.

of the prisoners consist of the under-kitchen and cellars of a building formerly a dwelling-house; the poor prisoners (at present amounting to more than twenty) are confined in the cellars, from which they have no means of exit, except into a very small yard (sixteen feet by thirteen and a half). Of these cellars, two in number, one only is habitable. This is eighteen feet nine inches, by thirteen feet eight inches; its height being only seven feet. The other is used as a general dressing-room. It has a grated window at the top communicating with a public passage, and at this window a prisoner is stationed to beg alms from the passengers. The under-kitchen is appropriated to debtors who are about to take the benefit of the Insolvent Debtors' Act. In this place, women prisoners are also confined, to whichever class they may belong. I saw one. She associates with the men during the day, but sleeps in a room by herself; some of the male prisoners, however, sleeping in an inner room, the communication to which is cut off during the night by placing a padlock on the door; to the great danger, as it appeared to me, of the lives of the men if a fire should break out. Such of the male prisoners as will not, or cannot, pay 2s. per week each for a bed, sleep together upon straw in two large bays, both in the same room. Each bay is calculated to hold thirteen prisoners, and, when full, the allowance per man is only a width of ten inches. The prisoners complained that their straw was infested with lice. The keeper, on the other hand, said the prisoners' straw was changed as often as they required it. The prisoners also complained that they were supplied with impure water. This was denied by the keeper, and I had no means of ascertaining the truth; but, having observed a spirit of exaggeration regarding some other matters, I do not place implicit reliance on the statement. The keeper admitted that the day-rooms were infested with rats. There seems no provision in the Acts establishing the court and the prison, for supplying the debtors with food. They are permitted, however, to receive such as is brought to them by their friends; and that source failing, an allowance of bread (but of bread alone) has been made for some years to them by the guardians of the poor. There is a large and somewhat airy yard, on one side of the cellar, used as a day-room; and into this yard the keeper sometimes permits the prisoners to walk; but, he says,

he has been obliged to withhold this privilege lately, on account of the turbulent conduct of his inmates, which had put him not seldom in fear of his life. The prisoners exact a contribution of half-a-crown towards fire and candle from every new-comer; and the process by which they obtain it is as follows:—They arm themselves with old swords, which the keeper stated had, to his knowledge, been kept six-and-twenty years for this purpose. They surround the new prisoner, terrifying him with their swords, and insulting him in various ways, sometimes using considerable violence. When he has gone through this ceremony, which is called ‘chumming,’ the contribution is demanded; and if not instantly paid, the new-comer is stripped of his coat and waistcoat, which are detained from him until the money is raised. I asked for a sight of their swords, but the keeper said he had sent them away on the evening of the trial, which was on Saturday; and although my visit was made early on the morning of Monday following, he had procured workmen, who were already in the day-rooms preparing to whitewash them. The exposure consequent on the trial will, therefore, probably do some good—at least for a time; but it does not appear to me that, by any improvements short of extensive alteration in the building itself, the prison can be put on a proper footing. I was informed by the Mayor, that he had written to you upon the subject; and he showed me an answer from Mr. Phillips, stating that it was your intention to take the matter into consideration. It has occurred to me, however, that the evidence on the trial—the material part of which I have now given—together with the information I obtained on my visit, might, perhaps, furnish some facts in addition to those of which you are already in possession.

‘I have the honour to be, Sir, &c.,

‘M. D. HILL.

‘The Right Hon. Sir J. Graham, Bart., &c. &c.’

To this letter the following answer was received:—

‘Whitehall, 6th April, 1844.

‘SIR,—I am directed by Secretary Sir James Graham to inform you, with reference to your letter of the 12th of January last, that he has pointed out to the Commissioners of the Court of Requests at Birmingham the necessity of their taking imme-

diate measures to provide a suitable prison, and of abstaining from committing persons until they have provided one.

‘ I am, Sir,

‘ Your obedient servant,

‘ S. M. PHILLIPS.

‘ M. D. Hill, Esq., Recorder of Birmingham.’

The Commissioners expended five hundred pounds in improvements ; but on the establishment of County Courts, which followed shortly afterwards, the prison was abandoned as a place of confinement.

The vitality of an abuse will be strikingly illustrated by comparing the foregoing account of the Birmingham prison with the description of the usages prevailing in a metropolitan gaol in the year 1751, as described by the pen of Fielding in the second chapter of *Amelia*.

‘ Mr. Booth was no sooner arrived in the prison, than a number of persons gathered round him—all demanding garnish ; to which Mr. Booth not making a ready answer, as indeed he did not understand the word, some were going to lay hold of him, when a person of apparent dignity came up, and insisted that no one should affront the gentleman. This person, then, who was no less than the master or keeper of the prison, turning towards Mr. Booth, acquainted him that it was the custom of the place for every prisoner, upon his first arrival there, to give something to the former prisoners to make them drink. This, he said, was what they called garnish ; and concluded with advising his new customer to draw his purse upon the present occasion. Mr. Booth answered, that he would very readily comply with this laudable custom was it in his power, but that, in reality, he had not a shilling in his pocket, and, what was worse, he had not a shilling in the world. ‘ Oho ! if that be the case,’ cries the keeper, ‘ it is another matter, and I have nothing to say !’ Upon which, he immediately departed, and left poor Booth to the mercy of his companions, who, without loss of time, applied themselves to uncasing, as they termed it, and with such dexterity, that his coat was not only stript off, but out of sight in a minute.

‘ Mr. Booth was too weak to resist, and too wise to complain of this usage. As soon, therefore, as he was at liberty and

declared free of the place, he summoned his philosophy, of which he had no inconsiderable share, to his assistance, and resolved to make himself as easy as possible under his present circumstances.'

He had been committed on a charge destitute of foundation, because he had not half-a-crown to buy it off. The justice is thus depicted:—

'Mr. Thrasher, however, the justice before whom the prisoners above mentioned were now brought, had some few imperfections in his magistratical capacity. I own, I have been sometimes inclined to think, that this office of a Justice of Peace requires some knowledge of the law; for this simple reason,—because, in every case which comes before him, he is to judge and act according to law. Again, as these laws are contained in a great variety of books; the statutes which relate to the office of a Justice of Peace making of themselves at least two large volumes in folio; and that part of his jurisdiction, which is founded on the common law, being dispersed in above a hundred volumes,—I cannot conceive how this knowledge should be acquired without reading; and yet, certain it is, Mr. Thrasher never read one syllable of the matter.

'This, perhaps, was a defect; but this was not all; for where mere ignorance is to decide a point between two litigants, it will always be an even chance whether it decides right or wrong; but, sorry am I to say, right was often in a much worse situation than this, and wrong hath often had five hundred to one on his side before that magistrate; who, if he was ignorant of the laws of England, was yet well versed in the laws of nature. He perfectly well understood that fundamental principle so strongly laid down in the institutes of the learned Rochefoucault, by which the duty of self-love is so strongly enforced, and every man is taught to consider himself as the centre of gravity, and to attract all things thither. To speak the truth plainly, the Justice was never indifferent in a cause, but when he could get nothing on either side.'

The Trading Justice, notwithstanding the stinging satire of Fielding, and his own high-minded example as a magistrate, survived in some parts of the country until a period within my own memory at the Bar. The race is now, I believe, like that of the Dodo, extinct. The *habitat* of the last specimen I ever heard

of, was at Warwick. He had the reputation of making orders on any matter within his jurisdiction, on receiving instructions and half-a-crown, which had used to be not infrequently brought to him (said report), by village-carriers and market-women; so that on such occasions he neither saw witnesses nor parties. Shortly before his death he had made an order of affiliation. On appeal to the Quarter Sessions, his brother magistrates quashed the order *in furore*, the case completely breaking down; on which, being counsel for the appellant, I applied for costs against the respondents, the parish officers; on the ground that they went a journey of twenty miles from their own parish, to find the only magistrate in the county who would have made such an order. The Court awarded the costs,—a most unusual occurrence. It was said, at the time, that the old magistrate took the reproof which his brethren had thus administered to heart; and that he never left his house after that day. Certain it is that he died within a fortnight.

Additional information on the subject of this Charge will be found in a pamphlet on the *Inutility of Grand Juries* ;* which, in addition to valuable matter supplied by the author, contains well-chosen extracts from the Eighth Report of the Commissioners on Criminal Law, 1845. In answer to a question proposed by the Commissioners, Lord Denman says—‘ I can see no benefit produced by Grand Juries, but the co-operation of the higher and middle classes in the administration of justice. But this I estimate very highly, and hope it may be preserved through all changes by some means or other.’

* *Observations on the Inutility of Grand Juries; and Suggestions for their Abolition.* 2nd edition. 1857. London: Benning and Co.

CHARGE OF OCTOBER, 1855.

GENTLEMEN OF THE GRAND JURY—

I HAVE chosen for the subject of my present Charge, that mode of treating criminals which has been called 'the Ticket-of-leave System.'

Of late, this plan has attracted much attention in Parliament, in courts of justice, and in the public journals. The general impression seems to be that it does not work well. For myself, I am disposed to think that the effect of its operation, so far as it has hitherto been tried, has been exaggerated, both for evil and for good. But I should be grieved to find the system condemned in its theory, even supposing its practice has hitherto been open to animadversion, because it embodies what I hold to be two most salutary principles:—First, that the criminal should have the opportunity of working his way out of gaol; and second, that he should, for a limited period, be liable to be deprived of his liberty so regained, if his course of life should be such as to give reasonable ground for belief that he had relapsed into criminal habits.

To understand the true bearings of the questions which I intend to raise for your consideration, it will be necessary to take a comprehensive view of that general treatment of criminals, which results from the operation of a public opinion making itself felt in the Legislature and the Executive Government; and often, unconsciously to the agents, dictating the verdicts of juries, and qualifying the sentences of our courts; such opinion acting in combination with other circumstances over which none of these authorities have any effective control. Time was—and the era is not so long past, but that many of us have a vivid remembrance of its horrors—when our penal code was the most sanguinary of the civilized world. The list of offences punishable with death presented a fearful catalogue, descending from wilful murder down to privately stealing in a shop to the amount of 5s. Nor were the terrors

of the law permitted to sleep; so that when the feelings of the people at last awoke to the cruelty of these inflictions, they were outraged at every turn with appalling scenes of legal vengeance.

As might have been expected by reflecting minds conversant with history, and learning from its pages the vicissitudes of public sentiment, an overwhelming force of opinion became directed against the ferocious policy which had so long prevailed; and, as you know, the list of capital offences was not only promptly reduced to the narrowest limits, but, the disposition towards lenity outstripping the course of legislation, we are at length arrived at the point when, even in deliberate murder, it is not an inflexible rule that conviction shall be followed by execution.

Gentlemen, during the period while so many offences were punished with death, the commutation of the capital sentence to one of transportation being an act of mercy, the minor, though still heavy penalty, was not regarded as severe; but when capital punishment became applicable only to a small class of crimes, transportation began to be looked upon in a different light; and now that, by the refusal of all our colonies, except one, to admit convicts among them, transportation has been in great part abolished, a similar feeling begins to prevail against long terms of imprisonment; which makes way all the more quickly, because long imprisonments, not having been imposed by sentence during the period that capital punishment and transportation were freely resorted to, present an aspect of novelty greatly deceptive, since a large proportion of convicts sentenced to transportation, were at all times left in the hulks to be punished by confinement, extending by law through the whole period for which they were adjudged to be sent abroad; although it was usual to discharge them after a detention of much inferior length.

How far this disposition gradually to lessen the amount of punishment will be carried, it is impossible to predict. All I can say is, that its progress is very rapid, and that it shows no sign of having approached its termination. We might suppose, at first sight, that shortening terms of confinement would furnish a means of relieving the pressure on the capacity of our prisons; and would enable us to provide for the surplus numbers

caused by the stoppage of transportation. But those who are practically acquainted with the subject, know that a short imprisonment is likely to be followed by a speedy relapse; and that the prisoner often returns to captivity, bringing with him companions whom, in the interval of enlargement, he had seduced into crime.

Recollecting these difficulties, Gentlemen, you will not perhaps be surprised that the Government has not yet discovered a perfect solution of the hard problem—What are we to do with our criminals? In this state of perplexity it resolved on adopting, to a limited extent, the first principle to which I have adverted—that of making the duration of the imprisonment dependent on the conduct of the prisoner. It did not apply the principle universally, perhaps because it was not prepared to contend with the strong, although, I must think morbid feeling in favour of slight imprisonments; under which the culprit remains too short a time to benefit much by any reformatory system, however potent. Thus it restricted the experiment to the cases of such convicts as had incurred the penalty of transportation, or that of penal servitude. Gentlemen, I speak upon conjecture, but I must presume the existence of some cogent reason which induces the Government to deny to the lesser offender the privilege of earning his discharge by his own exertions, while it concedes it to the greater criminal who has incurred heavier punishment; and I am not aware of any other reason than the one which I have pointed out. If, however, the reason suggested should be that on which the Government is really acting, I trust it will be remembered that many convicts, not liable to transportation or penal servitude, are sentenced to imprisonment for as long a period as two, and, in some cases, three and even four years; and that many instances may be found in the returns made to the House of Lords, in which a much less time has been held to furnish a sufficient length of probation to justify the grant of tickets-of-leave. But, Gentlemen, if you desire, as I most earnestly do, to see this principle universally adopted, you must be prepared to strengthen the hands of Government, by advocating such a change in the law as will enable those who administer the criminal justice of the country to retain in custody all such as are convicted of crime, until they have, by reliable tests, demonstrated that they

have the will and the power to gain an honest livelihood when at large. You must be content that they shall be retained until habits of industry are formed—until moderate skill in some useful occupation is acquired—until the great lesson of self-control is mastered—in short, until the convict ceases to be a criminal, resolves to fulfil his duties both to God and to man, and has surmounted all obstacles against carrying such resolutions into successful action. But as no training, however enlightened and vigilant, will produce its intended effects on every individual subjected to its discipline, what are we to do with the incurable? Gentlemen, we must face this question: we must not flinch from answering, that we propose to detain them in prison until they are released by death. You keep the maniac in a prison (which you call an asylum) under similar conditions; you guard against his escape until he is taken from you, either because he is restored to sanity, or has departed to another world. If, Gentlemen, innocent misfortune may and must be so treated, why not thus deal with incorrigible depravity? This is a question which I have asked times out of number, without ever being so fortunate as to extract a reply. It is always tacitly assumed that imprisonment must not be perpetual; but whether that assumption is founded on any reason supposed to arise out of the nature of things, or whether it only rests on the present state of public feeling, I know not. If the former ground is taken, I would give much to learn what the argument is; when disclosed, I must either answer it or yield to it; but while I am kept in the dark, each alternative is barred against me. If, however, this assumed inadmissibility of perpetual imprisonment is rested on the present state of public sentiment, I have seen too often the change from wrong to right in that mighty power, to despair of its becoming an ally instead of an opponent. It is my belief that if long terms of imprisonment, even to perpetuity, were placed before the public mind as indissolubly connected with the privilege to the convict of working out his own redemption from thralldom, by proving himself fit for liberty, it would require no great lapse of time to produce the change in opinion which I contemplate.

Alarm on the score of expense ought not to be entertained, for two reasons. First, because no unreformed inmates of a prison, however extravagant its expenditure may be, cost the

community so much as they would do if at large. This fact has been so often proved that I must be allowed to assume it as undeniable. But the second reason is, that prisons may be made either altogether, or to a very great extent, self-supporting. In some of the Western States of the North American Republic this important object has been more than accomplished, as the labour of the prisoners yields a revenue greater than is required for their food, lodging, and clothing, their government, and their instruction; in short, for all the various items which form the total expenditure of a gaol. It is quite true that labour is more valuable, and that food is cheaper in those States than it is with us. But, notwithstanding these facts, it was shown by the evidence which Mr. Charles Pearson adduced before the Committee of the House of Commons appointed to investigate this subject in 1850, to be in the highest degree probable that similar results might be obtained here. Whoever shall read that valuable testimony will, I cannot but think, even if not perfectly convinced, arrive at the conclusion that sufficient proof has been given to justify, if not to demand, such an experiment as would set the controversy at rest.

Let me now, Gentlemen, call your attention more specifically to the ticket-of-leave men. By a statute passed in the year 1853, a new penalty was created under the name of 'penal servitude.' This penalty only differs from that of imprisonment with hard labour by the provision for restoring the prisoner to liberty without waiting for the expiration of his sentence—namely, by a licence from the Secretary of State, the instrument certifying that such indulgence has been granted being called the ticket-of-leave. Until, however, the expiration of the term of penal servitude to which the convict has been adjudged by the sentence of the Court, the licence is liable to be revoked at the discretion of the Minister, and, when so revoked, the prisoner is recommitted in execution of his original sentence. This new penalty *must* now be substituted by the Courts in all cases formerly punished by transportation, except where his offence renders the convict liable to transportation for a period not less than fourteen years, while it *may* be substituted even for the longest terms.

It was also provided that convicts under sentence of trans-

portation at the passing of the Act, or subsequently sentenced to that punishment, should be made capable of benefiting by the licence of the Secretary of State on the same conditions as to revocation with those sentenced to penal servitude.

Gentlemen, it is the provision for a conditional discharge from prison which has attracted public attention, and has given to the system its name. That both provisions are founded on sound principles is my firm belief, as I have already stated. It is obvious, however, that it is the first upon which the greatest stress ought to be laid, for this plain reason, that, in proportion as the means of reformation are furnished to the prisoner, and the tests of reformation are well chosen, and faithfully applied, in exactly that same proportion will the necessity for the second provision—viz., the power of recalling the ticket-of-leave—be diminished; so that, if we would insure perfect tests, and a perfect application of them, the enlargement of the prisoner might be made absolute in the first instance; while, on the other hand, a convict imperfectly reformed will not unfrequently be undeterred, by the power of revocation hung over him, from yielding eventually to the temptations to which, when at liberty, he is certain to be exposed. As a protection to society it is also, as it now stands, imperfect in this further particular, that the power of revocation terminates with the period fixed by the original sentence, which, at the time the licence is granted, may be nearly expired. This defect, however, might readily be amended; the power of recall might remain in force until a certain fixed period after liberation, to be further extended if, during that same period, the recall should be made.

And this brings me to what I consider the most serious defect in the statute. The condition which is set forth on the ticket-of-leave is as follows:—

‘The power of revoking or altering the licence of a convict will most certainly be exercised in case of his misconduct. If, therefore, he wishes to retain the privilege which, by his good behaviour under penal discipline, he has obtained, he must prove by his subsequent conduct that he is really worthy of her Majesty’s clemency. To produce a forfeiture of the licence it is by no means necessary that the holder should be convicted of any new offence. If he associates with notoriously bad

characters, leads an idle and dissolute life, or has no visible means of obtaining an honest livelihood, &c., it will be assumed that he is about to relapse into crime, and he will be at once apprehended and re-committed to prison under his original sentence.'

It is not, Gentlemen, that I disapprove of placing these men again under restraint without evidence of their having committed a new crime. I must have greatly changed my opinions before I could raise any objection of that kind. Possibly it may be remembered by some of those whom I have now the honour to address, that, in the year 1850, and again in the year 1851, I ventured to advise that all persons who had been convicted of acts of dishonesty should be liable, when, in the belief of competent witnesses, they were leading a life of crime, to be called on for proof that they were in the enjoyment of the means of subsistence, drawn from lawful sources; that, in default of such proof, they should be held to bail for a limited period, and, in default of bail, should be committed to prison.

The principle on which my proposed measure was founded has now been adopted by the Legislature, but without the safeguard of a trial. According to the Act, the prisoner is deprived of his liberty by the mere stroke of the Minister's pen. The Legislature probably proceeded upon the ground that, as it is the confidence placed in his reformation which gains him his liberty, so if that confidence be lost, his privilege ought to be withdrawn. Nor am I, for one, much afraid that a power of this kind, however arbitrary, will be often abused. On the contrary, I believe the danger lies on the other side. It is so repugnant to the spirit of our laws to condemn without a trial, that an English Minister is under a much stronger temptation to withhold the exercise of such a power in cases where it is justly demanded, than to use it oppressively; and, accordingly, symptoms of such forbearance are not wanting. Mr. Jardine, the London magistrate, lately complained that forty ticket-of-leave men infested the neighbourhood of his court; meaning, doubtless, to intimate by that statement, that he had in his vicinity forty of such convicts, who had incurred the forfeiture of their licences by disappointing the expectations on which they were granted. If this be so, it would seem but reasonable that in each of these instances the ticket-of-leave should be

recalled, unless, indeed, the sentences have expired, when it would be incorrect to denominate these convicts ticket-of-leave men, since they stand only in the same position with all other prisoners who have received their absolute discharge. But, Gentlemen, it appears by a return made at the end of March last, that the practice is not to withdraw the licence until the convict stands charged with a new offence—a deviation from the terms of the warning written upon the ticket-of-leave, which I am unable to explain except by the conjecture which I have offered to your notice.

Gentlemen, I have said that the working of the system has been, as I think, exaggerated, both by its opponents and its admirers, for evil and for good. For evil, because I feel certain that convicts who have now tickets-of-leave would have been released unconditionally after a detention not very much greater than that to which they have been subjected under the new system. And I ground this opinion on three important facts—First, on the growing impatience of severe punishments evinced by the public; second, on the usage of liberating transports, not sent abroad, long before their terms of transportation have expired. To these two facts I have already adverted. The third is, that the Legislature, when it substituted penal servitude for transportation, very much abridged the duration of the punishment.

Gentlemen, the real evil with which we have to contend stands thus:—So long as we could impose our criminals on other communities we did not care to cultivate the science of reformation; and now that this lazy and selfish resource has failed us, we, in the stress of our difficulties, are compelled suddenly to call upon the functionaries of our gaols to perform a task demanding qualifications with which, without a long previous training, it is unreasonable to expect them to be endowed, in that full measure which can alone insure success. Revolving these circumstances in your minds, you may, perhaps, Gentlemen, arrive at the conclusion that no small portion of the unpopularity which has fallen upon the new system is produced by its having come into existence just at the time when the country was beginning to suffer from the augmented number of convicts which the stoppage of transportation had liberated at home, instead of their being thrown into our colonial population as heretofore. The disease, if I may so illustrate my meaning,

results from the obstruction of the accustomed vent—namely, transportation; but the remedy—the ticket-of-leave system—failing to work a perfect cure, has been censured as if it were the cause of the malady.

Gentlemen, the reason why I think the system has been over-estimated for good as well as for evil is, because it applies only to a comparatively small class, and because the evidence of reformation still remains doubtful, although, I must admit, much more cogent, and applying to a larger proportion of the licences than I had expected to find it. And I make this admission without forgetting that large subtractions may be required from the estimated results. The estimate is, that from eighty to ninety per cent. of convicts discharged with tickets-of-leave are permanently reformed.

Gentlemen, there is, as you well know, an establishment at Mettray, in France, for the reformation of juvenile offenders, which stands at the head of all reformatory institutions. Mettray enjoys every possible advantage. Its Founder and chief Director, M. Demetz, who, by his visit here last week, may be personally known to you, is a man of unrivalled ability, long experience, and unexampled devotion to his great enterprise. His institution has gradually attained its present eminence by sixteen years of enlightened administration, conducted with sedulous care and assiduity; and yet even Mettray does not reclaim a greater proportion of its inmates than ninety per cent. Nevertheless, Gentlemen, ninety per cent. is, to my mind, a result so wonderful that nothing short of the very searching investigation which I have had the opportunity of making, could induce me to accept it as worthy of confidence; and, that being so, I must be permitted to receive the estimate of reformations effected among the ticket-of-leave men with some doubt and misgiving, though with implicit reliance on the good faith with which it is promulgated. The truth is, that permanent reformation demands years to test its reality, and the system has not been in operation for a sufficient length of time to furnish the required proof. The probabilities certainly look the other way. Mettray deals with young and plastic minds and bodies. It retains its wards a long time—often for many years. None of them leave Mettray until employment is procured for them. Each is placed under the superintendence of some benevolent

person residing in the neighbourhood of his master, who watches over the youth with the care of a guardian. Mettray is looked upon by those who have been its inmates as a home. It is a high gratification to them to visit their '*Colonie*,' as they are taught to call it. If they have not failed in their duties they are always kindly welcomed, and should they, through sickness or other misfortune, be thrown out of work, they find hospitable reception at Mettray.

Gentlemen, I shall be most agreeably surprised if experience shall justify those who superintend our ticket-of-leave system in placing their estimate so nearly on a par with the proved results of Mettray. It must, however, be remembered that we have all much to learn on the subject; and I do not forget that, in the opinion of Captain Maconochie, it is easier to reform adult than juvenile offenders. I will own that I have always regarded this view as paradoxical. Still it may be confirmed by experience, and may explain away the difficulty which now prevents my yielding a complete assent to the estimate on which I have been commenting.

It has been surmised, Gentlemen, that the tests on which the authorities rely for the reformation of the candidate for a licence, are of an unsatisfactory nature. It is said—I know not on what authority—that too much weight is given to the opinion which may be entertained of a convict by the chaplain. It is assumed that the chaplain will be very much guided by what he may suppose to be the depth and sincerity of religious impressions made upon the heart of the prisoner; and, reasoning on such presumption, it is argued that the life of a prisoner, subjected, as his actions are, to minute regulation and constant supervision, affords no tests by which it could be ascertained how far such impressions are genuine, and of a permanent character.

If, Gentlemen, the premises are well-founded, I shall be compelled to adopt the conclusion at which the objectors have arrived, at least until more freedom of action is allowed to prisoners than they at present enjoy. But it is my good fortune to know several of the able and exemplary men who fill the office of gaol chaplain; and judging of the body by those of its members with whom I am acquainted, I hold them as little disposed to depend on such fallacious tests as the most jealous objector can himself be. It is so obvious that the fate

of the prisoner should not depend upon a vague general opinion, but should be founded on an accumulation of facts, day by day recorded, that I should require strong evidence against the authorities of any prison before I could be led to believe that they had fallen into an error so glaring. Doubtless, a punctual attention to religious observances, where the prisoner has an option to fulfil or neglect them, must not be omitted in the account. But there is danger in giving any very great weight to manifestations of this kind, inasmuch as, even when they are based in sincerity, the prisoner is tempted to exaggeration in their display; so that what is pure in its inception becomes corrupt through the hope of temporal advantage. This danger is felt so strongly at Mettray that a provision is made against it, which perhaps will startle those to whom the treatment of prisoners and its difficulties is a novel study. The conductors, when they have confidence in the individual, are well pleased to see him begin to join in the sacrament of the Lord's Supper, having found by experience that after this event an improvement is generally visible in his moral conduct. But as such an effect can only be produced when the communicant is acting from pure motives and on settled resolutions, not only is it provided that no secular benefit shall accrue to him from taking part in this communion, but, as an admonition not to approach the table in a rash or presumptuous spirit, every fault he may commit for the week following receives punishment of double severity.

Yet, Gentlemen, although it has not been given us to search the heart of the prisoner, and to distinguish by any sure criterion between those manifestations of his spiritual condition which are sincere, and those which are merely specious, still we are not left without tests on which we may safely rely. 'By their fruits ye shall know them' is one, the value of which the highest authority has taught us to prize. We may rejoice that it is of easy application to that quality which, of all others, it is most essential should be acquired by the prisoner to insure him against relapse—I mean industry. We can measure the quantity of labour and estimate its value, especially if it be of the simpler kinds, with some approach to accuracy. Let, then, an account be opened with each prisoner, placing to his credit the value of his labour—the real value, if productive labour can

be found ; an assumed value, or rather a value upon an assumed scale, if his labour be not of a productive kind. Let him clearly understand that each day's labour will tell upon his liberation. If large in quantity and good in quality, it will materially advance him on his way. On the other hand, if deficient in either of these attributes, his progress will be retarded.

But a distant future, however bright—and no brighter prospect can open to the eyes of a prisoner than that of liberty—will not suffice without some hope of benefit nearer at hand. Let the prisoner, then, be allowed to expend a part of his earnings in the improvement of his diet. By acting on these principles we shall have provided for training him in habits of industry. But, although industry will, when he leaves his prison, furnish him with the means of honest maintenance, yet, unless he has learnt the art of self-government, he will not be effectually protected against the temptations to fall back into evil courses by which he will be assailed. Let him, then, be informed that every subtraction from the fund created by his labour for the indulgence of his palate will, like indolence, retard the hour of freedom ; thus he will be taught economy. Gentlemen, other habits are very desirable, but these are essential ; and, having explained how they may be induced, I must not dwell on the means of reformation at greater length.

Those among you who desire to give full scope to your inquiries upon this interesting subject, to learn into how many ramifications reformatory science of necessity runs—how its difficulties are to be overcome, and how contending claims are to be adjusted—must consult the works of Captain Maconochie. The principle that the convict should be detained, until by industry and good conduct he has earned his right to be free, was first enunciated by Archbishop Whately ; but it was developed into a system, and thus rendered capable of practical application, by Captain Maconochie. May his services, even yet, late though it be, obtain for him some recognition from his country, before the day shall arrive when earthly recompence will avail him nothing !

SEQUEL.

ARCHBISHOP WHATELY.

‘WITH respect to every sentence of confinement to hard labour, whether at the tread-wheel, or of any other kind, we would venture to suggest what we cannot but consider as a most important improvement, viz., that instead of a certain period of *time*, a convict should be sentenced to go through a certain quantity of *work*. We mean that a computation should be made of the average number of miles for instance which a man sentenced to the tread-wheel would be expected to walk in a week; and that then, a sentence of so many *weeks*’ labour should be interpreted to mean, so many *miles*; the convict to be released when, and not before, he had ‘dreed his weird;’ whether he chose to protract or to shorten the time of his penance. In the same manner he might be sentenced to beat so many hundred-weight of hemp; dig a ditch of such and such dimensions, &c.; always exacting *some* labour of all prisoners, and fixing a *minimum* sufficiently high to keep up the notion of hard labour, but leaving them at liberty as to the amount of it above the fixed daily task. The great advantage resulting would be, that criminals, whose habits probably had previously been idle, would thus be habituated not only to labour, but to form some *agreeable association* with the idea of labour. Every step a man took in the tread-wheel, he would be walking out of prison; every stroke of the spade would be cutting a passage for restoration to society.’*

Since the publication of this Charge, Captain Maconochie has stated to me that he has been misapprehended as regards the facility of reforming adult, compared with that of reforming juvenile offenders. His opinion, he says, is, not that the aspirations of adults, and their habits, are more easily changed

* *Whately's Lectures on Political Economy: with Remarks on Tithes, Poor-laws, and Penal Colonies.* Fourth Edition. 1855. London: J. W. Parker and Son. p. 251.

[This article first appeared in 1829, in a periodical work, long defunct, entitled the *London Review*.]

than those of the young, but that, when changed, the reformation is more likely to be permanent.

Penal servitude is not accurately defined in this Charge. A sentence to penal servitude empowers the Crown to remove the convict from the prison to which he is sent in execution of the judgment against him to the hulks, or to the Convict Prisons, as they are called, which have been established with the view of superseding the hulks. It is, however, to be lamented that the change has proceeded so tardily.

So long ago as the year 1801, Jeremy Bentham denounced, in correspondence with the Ministers of the day, the dire abominations inseparable, as it would appear, from confinement on board these vessels. And yet, so late as the Session of 1856, a Committee of the House of Commons had still to advise 'that the hulk system, which appears, by the evidence, to be already in a great measure relinquished, should be finally abandoned, with as little delay as possible.'* That evidence proving the accursed system, to which the attention of the Government had been called more than half a century before the Committee sat, to be still at its work of pollution.

Whoever desires to verify the statement that atrocious crimes are the inevitable concomitants of the detention of convicts on board the hulks, may read Bentham's Letter to Sir Charles Bunbury, written in the year 1801.† It appears that the attention of the Government had even then been called to the subject, not merely to the fact that such things were, but to the impossibility of preventing their recurrence. Private information, from a source of undoubted authority, assures me that, neither at home nor abroad, have efficient means been discovered, up to this day, for extinguishing these horrors. It would be monstrous to suppose that any effort has been spared to obliterate this foul stain, and yet if the impossibility of accomplishing this object has been established, how can we continue the practice of transportation? What are the vessels which convey the convicts to their destination but hulks in motion? What are hulks but transport vessels at rest?

* Committee on Transportation, House of Commons. Third Report. Session 1856.

† *Bentham's Works*, edited by Bowring. Vol. xi., p. 120.

In the evening of a long life devoted to the improvement of his country and mankind, and, in an especial manner, to the reformation of our criminal laws, Lord Brougham has to avow, with grief and indignation, that still 'the utterly execrable, the altogether abominable hulk, lies moored in the face of the day which it darkens, within sight of the land which it insults, riding on the waters which it stains with every unnatural excess of infernal pollution, triumphant over all morals !'*

When this Charge was delivered, the distinction made by the Home Office between convicts adjudged to transportation and those adjudged to penal servitude, by which the privilege of tickets-of-leave is withheld from the latter class, had not been drawn. This fact appears from the evidence of Colonel Jebb before the Transportation Committee already referred to.

' 1324. *Sir John Pakington*—Has any rule been laid down by the Secretary of State, restricting the Act of Parliament, in the way I now advert to ; namely, by prescribing that tickets-of-leave should be granted to persons under sentence of transportation, but not to persons under sentence of penal servitude ? —The Secretary of State has issued a rule by which convicts are made aware that sentences of penal servitude have been substituted in some cases for sentences of transportation, and that those sentences, being of much shorter duration than the sentences of transportation, are to be taken in place of them, and that the convict shall not, therefore, as a general rule, look forward to a remission ; but the Secretary of State has also said that he will be prepared to take into consideration any special cases which may be brought before him.

' 1325. What is the date of that rule ?—That rule was issued in November, 1855.

' 1326. *Chairman*—Was the date at which the notice referred to in Question 980 was issued, the month of November, 1855 ? —Yes, it was ; and in the interval between the passing of the Act of 1853 and the issue of that notice, the men were in a state of uncertainty as to what would happen to them.

' 1327. *Sir J. Pakington*—Can you tell this Committee

* Lord Brougham's Paper read at the First Provincial Meeting of the National Reformatory Union, held at Bristol, August, 1856. Authorized Report, p. 63.

whether, during that period (namely, from the passing of the Act in 1853 to November, 1855), any intention had been announced by the Secretary of State upon that subject?—No.

‘ 1328. Did you yourself know, from the passing of the Act in 1853 to November, 1855, whether the ticket-of-leave system was to be extended to penal servitude convicts or not?—I was not aware ; *I was in hopes it might, in consequence of its being left open in the Act, and knowing the extreme importance of placing before prisoners that strong inducement ; but I was not fully aware whether it would be done.* It was under consideration for a long time.

‘ 1329. It was left open, in fact, for two years?—It was left open for nearly two years.’*

The discussions in the public journals which followed the publication of my Charge produced a letter to the *Times* by Colonel Jebb, from which I learnt what were the intentions of the Secretary of State. The sentences to penal servitude during the two years and a-quarter which had elapsed since the passing of the Ticket-of-Leave Act amounted, at Birmingham, to 159. As the Act had drawn no distinction between the two classes as regards the privilege in question, convicts had been adjudged to longer terms of penal servitude than would have been fixed upon, had it been known to the Court that such distinction would be made, and the prisoner was generally informed that he had it in his power, by industry and good conduct, to shorten very materially his term of confinement. Under these painful circumstances, I felt it my duty strongly to urge upon the executive Government the justice and expediency of refraining from a retro-active operation of its rule, but without effect. The Home Secretary, however, kindly informed me of his willingness to mitigate sentences delivered under the impression which had been announced to the convicts, and the result was, that they have been shortened to one-third of their length.†

The reception of this Charge by the press showed, in the

* First Report of Committee on Transportation, House of Commons. 1856. p. 126.

† See my Evidence, Transportation Committee. Second Report, Question 1865—1874. App. Second Report, p. 175.

great number of contradictory opinions which its discussion brought to light, how various and unsettled are the notions as to the treatment of criminals afloat in society.

In the *Times* of October 11th appeared the following leading article:—

‘ Mr. M. D. Hill, the Recorder of Birmingham, has just delivered a very important Charge to the Grand Jury at the opening of the Quarter Sessions in that town. The subject the learned gentleman chose for his address was the ticket-of-leave system as at present practised in this country. As a social question, this is one of the most important points which he could have brought under public notice. The system, as at present administered, is a social nuisance of the worst kind. Mr. M. D. Hill appears as its advocate, and, consequently, from much that he has said we are compelled, with great reluctance, to differ. It is impossible to take up a police report, or any other record of criminal proceedings, and not to see that the ticket-of-leave men are among the most prominent malefactors in the country. Now we find them figuring in the annals of English Thuggee; now they are supplying their ripe necessities by a series of the most desperate burglaries in the northern portion of the island; now they are the chief actors in some brutal assault. The other day, a metropolitan magistrate complained that the neighbourhood of his Court was infested by a gang of these ruffians, who occasioned him the greatest annoyance. The police could but remain silent; they were well enough acquainted with the men and with their character. Mr. Hill says they could have arrested them; Mr. Jardine and the police thought otherwise. Now, with these facts before us—for they are facts, and strong facts—it follows either that the theory upon which the system rests is radically wrong, or that it is badly administered. Mr. M. D. Hill denies both positions—that is to say, he steps forward as a most energetic advocate of the theory, and he tells us that the estimate is, that from 80 to 90 per cent. of convicts discharged with tickets-of-leave are permanently reformed. Furthermore he states it as his opinion that the general impression with regard to the comparative facility with which gaol chaplains are duped by the prisoners into favourable reports, which result in tickets-of-leave, is founded upon error. ‘ It is my good fortune,’ he

said, 'to know several of the able and exemplary men who fill the office of gaol chaplain, and, judging of the body by those of its members with whom I am acquainted, I hold them as little disposed to depend on such fallacious tests as the most jealous objector can himself be.' Of course our argument fails if Mr. Hill could prove a suggestion which he throws out in the course of his address. This is, that the so-called ticket-of-leave men are not ticket-of-leave men at all, but either discharged convicts or ticket-of-leave men who have exhausted their sentences. In this case, *cadit quæstio*; there is an end of the matter. All that we have to do is to acknowledge that we have been misled by the judges, and magistrates, and police, and criminal reporters, and to leave Mr. Hill in complete possession of the field, and of a well-won triumph. Meanwhile, until better informed, we shall assume the ordinary impression to be the correct one, and argue as if it were so. The question of fact, of course, lies at the threshold of the discussion, and our very strong belief is that it must be decided against Mr. Hill.

'The theory, we said, upon which the ticket-of-leave system rests is wrong, or it is imperfectly and badly carried out. If the last point can be proved, as we think it can, it would be as yet premature to condemn the system which has not had a fair chance. On the contrary, the theory of conditional pardons recommends itself to the mind by every *à priori* consideration. Let us, for a moment, discard nominal reference to the present system, and surely it is obvious that the public have an additional guarantee if a convict discharged from imprisonment is for some time retained under the surveillance of the police. The ministers of justice can remit him to confinement, not for the proved commission of any fresh crime, but because his general conduct appears to warrant the suspicion either that he is secretly a criminal, or that he will soon fall into criminal ways again. This is very high prerogative dealing; if the transaction be regarded in the light in which we have put it, the ticket-of-leave system merely calls facts by other names. Again, it is highly for the advantage of the public that they should as soon as possible be liberated from the expense of supporting a convict in gaol. The time for his restoration is not, of course, when he has expiated a sentence, arbitrarily pronounced in ignorance of the man's

character, antecedents, and so forth; but when he gives fair promise of reformation. Every hour that he is detained in gaol after this is a dead loss to the public. The ticket-of-leave system helps us to sound conclusions also in this respect. The sentence may be pronounced by the judge, but it is administered by the gaoler. On the other hand, it would be much to be regretted if a convict should be let loose again upon society when the probability—nay, the certainty—is that he will at once relapse into his criminal courses. The ticket-of-leave system guards us also from this inconvenience, for by the help of it the judge can pronounce what is called a ‘long sentence,’ which can be remitted or maintained precisely according to the conduct of the convict. Fully conscious, as we are, of the benefit resulting to the public from this arrangement, we are yet compelled to admit that it has proved a failure; and we believe the failure to have arisen from the method of administration. Nor do we stand alone in this opinion. Upon such a subject, we are glad to invoke the testimony of an intelligent foreigner, whose eyes are not so liable to deception as our own through over familiarity with details. We call M. Demetz, of Mettray, to counsel the more readily as Mr. M. D. Hill has invoked his testimony, and we are therefore, as it were, examining his own witness. M. Demetz has been so obliging as to forward us copies of various publications connected with his Reformatory School at Mettray, for which we return him our best thanks; and in one of these, written by himself, we find a discussion on the ticket-of-leave system. Few men in Europe have bestowed more anxious or more successful attention upon this subject; and what is it that M. Demetz says of our practice? ‘*Déjà l’Angleterre a adopté cette mesure; mais nous avons des raisons de craindre que jusqu’à présent l’application n’en ait pas été faite avec toutes les précautions désirables.*’ This is just our opinion. The fault is not, as yet, proved to reside in the theory. If Mr. M. D. Hill could prove that we were not correct in our view that it is badly carried out, the natural conclusion would seem to be that the theory must be set aside altogether, and that we must look elsewhere, if we would reform our criminals and guard the public from harm.

‘As yet, and until the theory has a fair trial, it would be prema-

ture to arrive at such a conclusion. A degree of rigour must be infused into the administration of the system such as has not yet been known. We do not, of course, mean that the convicts are to be subjected to any additional hardships; but that the reality of their reformation must be tested in a far more stringent manner than heretofore. It must also be remembered that convict nature is human nature after all. What is to become of the old offender when he has been remitted to the town of his choice by the agency of the police, with his ticket-of-leave in his pocket? Suppose that matters go wrong with him—the neighbours, for example, look askance on him—the police discharge their duty of surveillance so clumsily or so inhumanly as to bring him under suspicion; what is he to do? We know, practically, what he does. He joins a company of men like himself, and levies war against society. We are only beginning to deal with this great question of the criminal population of the country, and years must pass before we have arrived at the right solution. Now that the colonies are closed against our crime, every criminal in the country will make the public responsible for him from his cradle to his grave, so we may as well consider what is the most effectual way of dealing with the difficulty. We had rather leave the question upon this plain, practical basis, than speak of charity, or philanthropy, for really the public have been so sickened with maudlin sentimentality and failures that any appeal to such feelings is, for the moment, likely to do more harm than good. We can't hang all the criminals. We can't transport them. If we did hit upon some new place for deportation, twenty years hence the same difficulty would meet us again in an exaggerated form. We must take the evil as it is, and we believe it will be found the cheapest and most politic course, as well as the most humane, to leave no stone unturned to bring about the reformation of the criminals, and not to discharge them upon society until they are reformed. In desperate cases, we must even acquiesce in the conclusion of imprisonment for life as a necessity. What can be done in the way of self-supporting prisons, as in the United States? The difficulty must be met; but, meanwhile, we protest, in the name of the British public, against this system of turning out criminals upon society, under the name of 'ticket-of-leave-men,'

to rob us in the public streets by day, to break into our houses at night, to assault and throttle unoffending persons—in a word, to keep the country in a state of constant alarm.’

The reasoning of the *Times* is thus combated in the *Birmingham Journal* of October 13th :—

‘The subject of Mr. Hill’s Charge, delivered on Monday, and reported in our Wednesday’s edition, is the lately-adopted system of a remission of terms of imprisonment conditional on good conduct. Briefly, he maintains that the apprehensions felt by many, from Lord St. Leonards downwards, of the effects of the ticket-of-leave system upon society generally, and especially upon crime, are exaggerated, as its salutary influences are also over-estimated; that the principle of conditional discharge from prison is sound, supposing the tests of reformation are anything like perfect, but that the law is administered neither in the letter nor the spirit of the legislative enactment, and not in accordance with the principle upon which it is founded; that no small portion of the unpopularity of the system is due to its commencement when the country was beginning to suffer from the stoppage of transportation, and the ticket-of-leave plan, failing to work a perfect cure, has been censured as if it were the cause of the disease itself.

‘It appears to us that in the main it is impossible to gainsay the reasoning upon which these statements are founded, as it is to dissent from the conclusions themselves, if it is once admitted that punishments are not merely the revenge of society, but have in view the reformation of the offender; not merely his temporary abstraction from society, but a process of restoration and moral training which will fit him for returning to it. The theory of the learned Recorder is either right or wrong accordingly as this is admitted or denied. Grant that the *lex talionis* is no longer defensible, and it follows that the duration of the punishment of a criminal should be regulated by his abandonment of that condition of mind which prompted his offence, rather than by the expiry of the term of imprisonment which has been fixed according to an arbitrary estimate of the gravity of the crime. If this be so, the principle of the ticket-of-leave system is correct, and if the tests of reformation

were reliable, its practice would be attended by the best results to the erring criminal and to society also. But here the difficulty arises, for the temptation to deceit is great, and we must add that the mawkish sentimentality of the age fosters that credulity which a clever rogue knows how to turn to account. Undoubtedly if the law, as it stands, was enforced, the temptation to hypocrisy would be greatly lessened, for the condition set forth on the ticket-of-leave itself states that the mere association with bad characters will be sufficient to endanger the liberty of the holder. But the law is not enforced; no evidence of misconduct short of actual crime is considered to justify a revocation of the licence; the condition of freedom is therefore lost sight of. Practically, a ticket-of-leave is a free pardon, altogether independent of the conduct of the holder, if he stops short of actual crime, and then indeed he is amenable to the law, in common with criminals generally. How far the enforcement of the condition upon which the licence is granted would tend to make the system less dangerous to society, we are not prepared to say; but it is obvious that the law, as it stands, must be enforced before it can be said to have had a fair trial. As administered, we fear that the plan is not calculated to improve the tone of society, or conduce to the safety of life or property; that a more thorough administration of the law, and a more perfect system of checks upon hypocrisy, would remove the chief causes of danger, is obvious; but until that is tried, the balance of good or evil is a mere speculation.

‘Before leaving this subject, it may be well to notice the extraordinary manner in which the Charge is discussed by the leading journal. With the best intention, no doubt, the *Times* submits Mr. Hill’s arguments to the process of editorial analysis, but the writer, with the Charge before him, manages, with extraordinary infelicity, to misstate nearly every argument of the Recorder; assuming that he has defended that which he specifically condemns, and using almost the same arguments to combat his imaginary antagonist which Mr. Hill employs to show why he does *not* believe that which the writer assumes he advocates. Independently of these misapprehensions, the whole article is a jumble of self-evident truisms and contradictions. Take this passage as an illustration:—‘The other day a metropolitan magistrate complained that the neighbourhood of his

Court was infested by a gang of these ruffians, who occasioned him the greatest annoyance. The police could but remain silent; they were well enough acquainted with the men and with their character. Mr. Hill says they could have arrested them; Mr. Jardine and the police thought otherwise. Now, with these facts before us,—for they are facts, and strong facts—it follows either that the theory upon which the system rests is radically wrong, or that it is badly administered. Mr. M. D. Hill denies both positions—that is to say, he steps forward as a most energetic advocate of the theory, and he tells us that the estimate is, that from 80 to 90 per cent. of convicts discharged with tickets-of-leave are permanently reformed.’

‘Did anybody ever read a more flagrant specimen of self-contradiction? The writer, in reference to the complaint of Mr. Jardine, that a gang of forty ticket-of-leave men infested the neighbourhood of the Police Court, states that Mr. Hill says the police might have arrested them (and the Recorder proves it from the very conditions set forth in the ticket-of-leave); and in six lines below he asserts, what that fact itself and the whole tenor of Mr. Hill’s Charge controverts, that not only the system, but its administration, has Mr. Hill for an advocate. The whole article is full of these misstatements and obvious absurdities, and is probably the worst specimen of writing, and the most unfair and pretentious abuse and use of argument which we ever remember to have seen in the generally able, but sometimes unequal leading columns of the *Times*; for the writer, not content with misrepresenting the opinions of the Recorder, coolly appropriates his arguments, and in some instances his very language, to demolish the unsound ethics which the writer has been pleased to ascribe to him. The whole article is a mistake; its admission into the columns of the *Times* the worst part of the blunder.’

The *Globe* thus treats the questions in controversy:—

‘*Globe*,’ October 13, 1855.

‘The ticket-of-leave system is undergoing a discussion which must be extremely useful in sifting facts and forming opinion, before the subject shall be taken up again in Parliament. A correspondent of the *Times*, this morning, correctly says, that

‘the ticket-of-leave system is the only mode, at present, open to the Government to relieve themselves of the incubus daily increasing,’—the accumulation of prisoners. And he makes several suggestions for improving the system, so as to correct the bad results of its present imperfect condition. ‘Amicus’ observes, that out-of-door occupations combine physical exertion with exercise of the mind, and have a more healthy influence than confinement within doors; and he proposes that the convicts, before earning their freedom, should be subjected to a more rigorous test of their reform, and particularly to a longer trial under labour, in such hard works as the construction of harbours of refuge around our coasts, roads through districts of difficult character, and similar enterprises, where ordinary labour cannot be employed without loss. These suggestions are excellent, and such provisions have always been comprised in the plans contemplated by the present reformers. An eminent practical philosopher, whose improvements have been useful in many a household, can never explain his latest invention without going back to the first principles of mechanics; and when a discussion is removed from a particular set to the public at large, we always have to begin from the commencement. Our surprise is, not that there should be some mistakes in taking up the point, but that the public, as may be inferred from the indications above cited, should have already got so far towards sound conclusions.

‘As usual, however, those who learn the truth somewhat late in the day are apt to imagine that those who have taught them are sadly mistaken in the matter; and, accordingly, we find a writer in a morning contemporary lecturing Mr. M. D. Hill,—one of the most earnest, as he was one of the earliest, advocates of reformatory imprisonment—upon the fallacies under which he labours. ‘The ticket-of-leave system,’ says our contemporary, ‘is a social nuisance of the worst kind; but Mr. M. D. Hill appears as its advocate.’ On the contrary, Mr. M. D. Hill appears as its critic, and he explains why the system is, at present, a nuisance of the worst kind. It has, he says, ‘been over-estimated for *good* as well as for evil’—both its advocates and its opponents exaggerating the evidence that they have. ‘It is impossible,’ says our contemporary, ‘to take up a police report, or any other record of criminal proceedings, and

not to see that the ticket-of-leave men are among the most prominent malefactors in the country. Now, we find them figuring in the annals of English Thuggee; now they are supplying their ripe necessities by a series of the most desperate burglaries in the northern portion of the island; now they are the chief actors in some brutal assault. The other day a metropolitan magistrate complained that the neighbourhood of his Court was infested by a gang of these ruffians, who occasioned him the greatest annoyance. The police could but remain silent; they were well enough acquainted with the men and with their character. Mr. Hill says they could have arrested them; Mr. Jardine and the police thought otherwise.'

'Mr. Hill could not have supposed that the police could have arrested them; what he says is, that the Secretary of State could issue an order to revoke the tickets if the men really had tickets-of-leave, and to return the men to prison. But, says Mr. Hill, since there is no provision for a proper examination or trial of the man on his being recommitted to prison, the Secretary of State hesitates to use a power so like a *lettre de cachet*, and the revocation of the ticket-of-leave is already almost in desuetude. Mr. Hill pointed to this very case as showing the imperfection of the present system. There are some other inaccuracies in the remarks of our contemporary. 'Mr. Hill,' he says, 'tells us that the estimate of permanent reforms is from 80 to 90 per cent.;' Mr. Hill mentions the estimate with an expression of his own opinion that it must be inaccurate, and says that 'nothing will induce him to accept it as worthy of confidence' without searching investigation. He is represented to say that gaol chaplains are not duped by the prisoners into favourable reports; what he really observes is, that chaplains are not more likely to be misled than other men of the world by certain fallacious tests, such as great pretence of piety; and we believe he is quite right. A clergyman in fact is as much more likely than a layman to discriminate the simulation of piety, as a mad doctor is to distinguish between real madness and feigned, a military surgeon between real disease and malingering.

'The fact is, that the 'ticket-of-leave system' is a name applied to a present arrangement, which has been adopted to a certain extent experimentally. The principles upon which it is grounded were entirely new to our jurisprudence. They are

stated by Mr. Hill to be—‘First, that the criminal should have the opportunity of working his way out of gaol; and second, that he should, for a limited period, be liable to be deprived of his liberty so regained, if his course of life should be such as to give reasonable ground for belief that he has relapsed into criminal habits.’ When transportation to the principal Australian colonies was unavoidably abandoned, it became necessary to find some mode of disposing of criminals convicted of the graver classes of offence. Already Captain Maconochie had laid down the lines, if we may call it so, on which the system of the principles just expressed could be carried out, but the idea was entirely novel. The principles have hitherto been supported only by a comparatively limited class of persons, peculiarly studious on the subject. The public did not interfere in the matter, and did not lend its support, and Government naturally hesitated to commit itself too far at first. Hence the principles of the proposed system of penal servitude were carried out with great restrictions. In the present ticket-of-leave system the sentences of imprisonment are too short, the power over the criminals is too limited, and his release is too freely and unconditionally granted. Hence the criminal is returned to society unreformed, and the ticket-of-leave man is often as formidable as the unconvicted ruffian.’

‘‘ Few men in Europe have bestowed more anxious or more successful attention upon this subject, than M. Demetz,’ says the *Times*; ‘and what is it that M. Demetz says of our practice? ‘*Déjà l’Angleterre à adopté cette mesure, mais nous avons des raisons de craindre que jusqu’à présent l’application n’en ait pas été faite avec toutes les précautions désirables.*’ This is just our opinion.’

‘ With this powerful support there is no doubt that we shall be able to procure a further reform, which shall place the practice in harmony with the theory.’

The ‘*Spectator*,’ of the same date, contains the two following articles :—

‘ CRIMINAL TREATMENT OF CRIMINALS.

‘ Laziness is the great vice which obstructs the improvement of society. We do not mean the laziness of the disreputable

classes, but the vice as it shows itself in the most respectable, and even in those who would consider themselves the teachers and leaders of their kind. It is little less than laziness which makes the impatient class of reformers hasten to seize conclusions without developing the necessary means to work out those conclusions, as though you could snatch loaves of bread out of the corn-field. And it is equally laziness which makes men assume that results cannot be attained, or even refuse to inquire into the means of attaining them. At this moment there is a great mass of experience, sound reasoning, and positive knowledge, which tell us what we should do with our criminals ; but the Legislature, and those who move the Legislature, are content to compromise with a great duty rather than go through a very moderate amount of proper labour in order to work out the question thoroughly. There are several interests at stake, all of them important. The object is to protect the innocent part of society—if in this view such a part can be said to exist—against the lawless irregularity of the criminal part. It may be conceded on a very simple principle of philosophy, that the shortest and cheapest mode to preserve society in a state of purity would be to kill off all criminals, and so to save the expense of their maintenance, and render the contamination of other classes absolutely impossible. There are two considerations that preclude this Draconian plan. One is, that a cruel law contaminates those who enforce it, and in extirpating a minority of criminals we should create a majority of criminals. The second, yet more important, has its root in the finite nature of human insight, and the slowness of human experience to work out its own best conclusions. Some of the most important truths to which we have attained have at an early stage of their development been regarded as heresies which it was criminal to admit or even to discuss ; and if we were to adopt the plan of extirpating our criminals, we should, in our blundering foresight, confound the reformers with the criminals, and place extinction upon the progress of society without cutting out the cancer.

‘ As we cannot send our criminals to Hades, we must bestow them somewhere else. We cannot follow *Punch’s* plan of driving them ‘to the world’s edge and pitching them over.’ They must abide with us in some way ; and the question is,

since they must exist, how they can be lodged so as to inflict no wanton suffering upon themselves, and yet inflict a minimum of contamination upon society. The plan of transportation seemed, in a geographical sense, to be a substitute for dismissal to Hades ; but we cannot find any place in the world so little eligible for the ordinary purposes of life that emigrants not of the criminal class will fail to seek it ; and hence we established in the Australian Colonies, not a pure prison for criminal purposes, but a community with an enormous percentage of criminal element in it. When we tried to isolate the criminal element in Norfolk Island, we found ourselves manufacturing a concentration of crime which it became an impiety to perpetuate. We discontinued the Norfolk Island forthwith, and followed it up with discontinuing Australia as the site for transportation. All these were rough and ready modes of getting rid of our criminals, without really considering what to do with them. We have put off that question to the present day, and still try to put it off ; and, as usual, we are paid for our laziness with an increase of trouble and expense.

‘ Transportation was discontinued years ago : long before that time, those who had taken the trouble to inquire into the subject, like M. Demetz in France, Mr. M. D. Hill, Captain Maconochie, and Mr. Adderley in this country, had shown with more or less exactness of reasoning, and with great accuracy for practical purposes, the true manner of dealing with our criminals. It is possible to diminish the amount of the criminal class at the source, by cutting off the supply, and converting a large proportion of our youth into honest citizens. With great numbers the casualties of an excessively poor home, life in the streets, total neglect of education, contamination by associating with depraved relatives, and other incidents, render it almost impossible to find the path to an honest livelihood ; and a dishonest course therefore became the only natural means of subsistence. In order to block out this great recruitment of the criminal forces, a plan of reformatory discipline would be required for children who have actually fallen into bad courses, and a system of education accessible to all for those who have not yet lapsed ; but we have deferred the system of public education until we can settle certain squabbles upon abstract sectarian questions ; each sect preferring to keep our youth in a

state of ignorance which exposes it to crime, rather than permit the risk that one sect or other will have a better chance of getting hold of the rising generation. The plan of reformatory institutions *has* been adopted ; we have Parkhurst, Redhill, and other such schools : but if the principle upon which these institutions are founded is sound—if there is any virtue in the success there attained—it is certain that the same course ought to be pursued with *all* the criminal youth, and not confined to a simple percentage of that class. It would be of little service to vaccinate one in ten of the population ; if we intend to prevent the prevalence of small-pox, our only course is to enforce vaccination for all. But because we are too lazy thoroughly to investigate the working of our present system, and the necessary working of an improved system, we compromise the question by boasting of Redhill and Parkhurst, and leave nine-tenths of the population unvaccinated against a disease worse than small-pox.

‘ So likewise with regard to the adult criminals. There is great reason to suppose that the circumstances which determine the adoption of an honest or criminal course of life, in most cases, are very trivial. Upon the whole, the understandings of this class are low ; they lapse more from ignorance than malignity. A modicum of well-supplied assistance would prevent crime in all but those few whose deformed nature places them in the order of *lusus naturæ*, and who in respect of criminal discipline may be regarded as practically insane. Their detention would be justified upon the same grounds that justify the detention of the insane. With regard to the other class, they are in the same condition so long as they are criminally disposed,—that is, they are insane, and should be in safe custody. As soon as they have ceased to be criminally disposed, and become disposed, like ordinary people to earn their livelihood in an honest way, they are cured of their insanity, and may safely go at large. Speaking generally, this cure can, in most cases, be well tested. If the criminal have cheerfully completed for a lengthened period a fair amount of task-work, he will have shown that he has acquired that frame of mind and those habits of hand which indicate social health. If, in the course of that discipline, he has found his condition, generally speaking, correspond with his own diligence in industry, there

is the greater probability that the species of blind logic thus taught to his sensations will direct him out in the world. But our legislators at large will not take the trouble of examining the rule so soundly laid down by Mr. M. D. Hill, in addressing the Birmingham Grand Jury—

‘‘ If they desired, as he did, to see that principle adopted, they must be prepared to strengthen the hands of Government by advocating such a change in the law as would enable those who administered it to retain in custody all such as were convicted of crime until they had, by sure and unequivocal tests, proved that they had the will and the power to gain an honest livelihood when at large. They must face that question. They must keep the maniac in prison, under restraint, unless he is satisfactorily proved to be fit to return to society.’

‘The conclusions which we are enforcing have been conceded, weighed, set aside for after-thought, re-examined, sifted, reduced to their best working form, and at last consistently advocated by some of the most influential men of all parties in this country as well as in France. We have had meetings on the Continent and in England; and within the last fortnight, besides the Conference of the friends of reformatory discipline at Birmingham, we have had M. Demetz, of Mettray, addressing friends at Bristol on the subject, and an admirable address by Mr. M. D. Hill to the Grand Jury at Birmingham. By degrees, no doubt, these earnest, consistent, and laborious reformers are gaining ground; they have established their case clearly on the grounds of logic and of practical experience; they are obstructed by nothing but that inherent laziness which continues the influence of bad laws in keeping up the numbers and force of the criminal part of the population. It is thus shown as clearly as it is possible to establish any social fact, that, monsters and accidents excepted, we might cut off the larger part of the supply of criminals, and remove the larger portion of the permanent criminals from society: but society, too lazy to go into the detail, unwilling to take the responsibility which a conviction thus worked out could alone justify, again compromises the question with adult as well as juvenile offenders, and in lieu of detaining the culprit until he has proved his cure, determines that he shall be sentenced to an imprisonment for a definite period,—as if we said to a man labouring under

insanity, or under any infectious disease, you shall go to the doctor's for two months, then to be driven forth upon society, cured or uncured.'

'THE ADHESION OF THE 'TIMES.'

'The adhesion of the *Times* to the principle which we have just been enforcing is a distinct event in itself. When that powerful organ adopts a principle, we infer that the principle is no longer militant in an order of devoted adherents, but triumphant in popular acceptance. It was a consciousness of the stamp of currency which the leading journal can give, that made Sir Robert Peel convey to the office in Printing-house Square the special thanks for support, which Mr. Carlyle first brought before the public in his Memoir of Mr. John Sterling. If the *Times*, faithful to its own title, strives to reflect the prevailing opinion of the day, it has only the more largely identified itself with such opinion, and acquired a larger power to distinguish opinion as being received. We may sometimes smile at the facility with which our great contemporary can take up a neglected cause just at the happy moment when the coming success of a principle may assist the success of a journal; but when it adopts propositions which we have at heart, we all of us congratulate ourselves on the event, and believe that we have success because the *Times* aids us. For several years, with little help from contemporary journalism, we had held the faith which we have just been preaching with renewed hope, that no convicted and imprisoned criminal should be restored to liberty until he shall have earned it by labour and conduct: the *Times* now adopts the same creed, and we infer that society at large is on the point of adopting it.

'Somewhat new to the cause, our contemporary, indeed, slightly misconceives the representations of its oldest advocates. For example, Mr. Hill, defending the principles on which the ticket-of-leave system is based, insists that the principles are sound, although they are exposed to serious misconception by their imperfect application in the existing system: the *Times* seems to regard Mr. Hill as being in some way a defender of the system as it is. Again, Mr. Hill mentions the alleged effect of the ticket-of-leave system upon the adult

criminals, as resulting in the reform of 90 per cent.—figures which he mentioned in order to express his strong doubt of their accuracy; and yet the figures are cited against him as his own. These, however, are minor errors, and since they must get corrected in the progress of discussion now likely to become practical, they will do no serious harm. Certain we are, that Mr. Hill, like Archbishop Whately, Captain Maconochie, and the other labourers in the same field, will take little umbrage at small mistakes, while they can congratulate themselves upon so fortunate an adherence as that of the great journal. It is hardly an exaggeration to say that the *Times* may do more in a single article than any other or all other educators of opinion in long years of toil. All we ask is, that the leading journal, having reached the top of the hill, will put a ‘scotcher’ behind its wheels, and not run back to the bottom; a mishap at which it would be easy to scold, but which scolding would not mend.’

The ‘*Examiner*’ of the same date writes as follows:—

‘THE TICKET-OF-LEAVE SYSTEM.

‘Mr. M. D. Hill has made the ticket-of-leave system the text of his Charge at the Birmingham Quarter Sessions. The conclusion he has arrived at, and to which he endeavours to conduct the public, is, that the effects of the system have been exaggerated both for good and evil. This is always a safe judgment; as there is nothing in the world of which the precise truth is thought and said, our language being shaped to a magnifying medium alike in praise and blame. But Mr. Hill’s reasoning has more positive results than the discovery of opposite excesses. He succeeds in vindicating the principle of the ticket-of-leave system, but he does not strengthen confidence in the machinery for carrying it into effect. It is politic and humane, wise and good, to give the convict the opportunity of redeeming himself. So far we thoroughly go with Mr. Hill; but we cannot share in his reliance on the authorities who have to decide in every particular case, whether there be or not the evidences of reformation. The power rests with the Secretary of State for the Home Department, who exercises it upon reports from the prisons, which reports will differ in value with all the differing

intellectual capacities employed in the management of gaols. The convict is generally not unskilled in dissimulation, often a consummate master of the art, while the chaplain who has to judge of him is rarely a man of any experience in the crooked ways of the world. The reverend gentleman is appointed to the prison because he is a kind, good man, and perhaps specially recommended by the very simplicity which makes him the easy dupe of a clever rogue. The candidate for a ticket-of-leave would have cheated his reverence in a horse-market, imposed on him in any of the most hacknied modes of sharpening and swindling; and is he less an overmatch for him when hypocrisy is to be played off against the disposition to believe the best? The chaplain is naturally prone to think that his ministrations and lessons have not been fruitless, and every knave knows how to flatter this predisposition. As it is the clergyman's business to work the reformation, it should not be in his province to pronounce upon the performance of his work. The proving process should be in other hands, with no self-love interested in the conclusion. We do not mean to say that the chaplain's report should not be received for as much as it may be fairly worth, but we contend that it should not be decisive, but weighed with or against other evidences.

'Mr. Hill touches upon the inconsistency of limiting the ticket-of-leave system to the class of offences punishable with transportation, thus refusing the opportunity and grace of reformation to the less grave offences. A direct bounty is thus offered to the more serious offences; for many a convict falling within the latter class obtains his ticket-of-leave within two years, while the lighter offender, condemned to two years' imprisonment, has to undergo the full term of his punishment. The limitation evinces either a distrust of the reformatory principle, or of the machinery for working it. The principle was distrusted, if it was thought most prudent and safe to try it upon a part, not the whole body of offenders. The machinery was distrusted, if it was apprehended that to extend the system to all would be to let loose on the public a vast number of misdoers, undeserving the grace shown to them. But the fact is that the change in the law had nothing to do with principle, and therefore had no principle in it. It was a shift of necessity. The Colonies would not consent to have the spawn of

crime flung upon them, and therefore transportation was retrenched, or turned into something else ; for which a scheme was patched up to fit the exigency, without a thought or care of conformity or accord with the rest of the penal system. Punishment is subordinate to reformation with one class of prisoners in our gaols, but not with the others. Is it not, then, thought worth while to reform small offenders? What, then, is the object? Detering example. And is detering example good only for them, and not for the greater offenders? Or is reformation, on the other hand, more to be expected, and to be courted from the great offenders, and utterly neglected with the smaller culprits?

‘ Mr. Hill has not shrunk from the startling question—What is to be done with incorrigible criminals?—a problem which must follow the success of reformatory discipline. It is, unhappily, still far off in the order of things, but yet it is not amiss to contemplate it.

‘ ‘ As no training, however enlightened and vigilant,’ said the Recorder of Birmingham, ‘ will produce its intended effects on every individual subjected to its discipline, what are we to do with the incurable? Gentlemen, we must face this question: we must not flinch from answering, that we propose to detain them in prison until they are released by death. You keep the maniac in a prison (which you call an asylum) under similar conditions; you guard against his escape until he is taken from you, either because he is restored to sanity, or has departed to another world. If, Gentlemen, innocent misfortune may and must be so treated, why not thus deal with incorrigible depravity? This is a question which I have asked times out of number, without ever being so fortunate as to extract a reply. It is always tacitly assumed that imprisonment must not be perpetual; but whether that assumption is founded on any reason supposed to arise out of the nature of things, or whether it only rests on the present state of public feeling, I know not. If the former ground is taken, I would give much to learn what the argument is; when disclosed, I must either answer it or yield to it; but while I am kept in the dark, each alternative is barred against me. If, however, this assumed inadmissibility of perpetual imprisonment is rested on the present state of public sentiment, I have seen too often the change

from wrong to right in that mighty power, to despair of its becoming an ally instead of an opponent. It is my belief that if long terms of imprisonment, even to perpetuity, were placed before the public mind as indissolubly connected with the privilege to the convict of working out his own redemption from thralldom, by proving himself fit for liberty, it would require no great lapse of time to produce the change in opinion which I contemplate. Alarm on the score of expense ought not to be entertained, for two reasons. First, because *no unreformed inmates of a prison, however extravagant its expenditure may be, cost the community so much as they would do if at large.* This fact has been so often proved, that I must be allowed to assume it as undeniable. But the second reason is, that prisons may be made either altogether, or to a very great extent, self-supporting.'

'If the alternative be that the incorrigible rogue is to live at large at the heaviest cost to the public in the shape of pillage, or at a lighter cost in gaol to the end of his days, there can be no question about the rational and just choice. But long before the debate of this proposition for practical purposes, there must have been adopted some better system of testing the corrigible than at present exists. We are now in the very rudest and most imperfect winnowing process, and before we can pretend to put aside the chaff as worthless, we must have some better security that none of it passes for wholesome grain.'

The following article on the 'Science of Reformation,' is from the '*Inquirer*' of the same date:—

'The Recorder of Birmingham has been developing some of his views on the 'Science of Reformation.' Perhaps it would rather come under what Professor Ferrier grandly terms 'Agnoiology, or the Science of Ignorance.' Anyhow it is obvious enough that what Mr. M. D. Hill knows best on the subject is, first, the greatness of our present failure—at least as regards grown-up criminals—and next, the theoretic views which he himself holds, but which, not having yet sustained any trial, are only the preliminary questions addressed to nature, which may as well result in extending that very wide branch of science before alluded to as in rescuing the 'Science Reformation' out of the Agnoiological domains.

' One reason why it is so difficult for ordinary human beings to take the interest that it is their duty to take in educational and philanthropic questions is, that the class of beings they are providing for are generally so imperfectly and *unreally* conceived. So much more belief is habitually placed in the *system* than any system will bear ; so little room is allowed for the expansive power of individual and personal elements of character. In works of education, for instance, children are apt to be regarded, *en masse*, as the subjects for a species of moral and intellectual tailoring, transacted by teachers and patrons, and intended to provide them with a good suit of respectable moral habits (a Sunday suit, and an everyday suit). Educational systems are drawn up without any adequate perception how very little any system, even the best, can effect. There is no proportionate appreciation of the smallness of the machinery provided. The self-importance of the teaching class makes them take to their own credit very much that grows up under, or in spite of, their system, and which would equally grow up without it. The rules and the methods have a quite exaggerated value assigned to them. The personal and unmethodical contact of mind with mind, from which almost all the educational results spring, is quite passed over. And the case is usually still worse when these educational systems are not rigid rules, applying equally to all, but are the results of a theory of personal character specially elaborated by didactic genius for the treatment of given cases. In physicking of any sort there is little safety. But when the physicking is *moral*, and is not the unconscious result of the natural impressions mutually and involuntarily produced, but is an elaborate course of 'treatment' pursued by theoretic physicians of character, after due study of 'symptoms,' there is a great deal more harm done by it, we believe, than good. *Methods* of discipline, moral regulations, &c., are dull and painful studies enough, and of but little use even to the regular teaching profession ; but the most rigid set of rules impartially applied are more beneficial, we believe, than the professed special doctoring of children on a supposed knowledge of the characters and moral deficiencies of each. The most hurtful sort of systematic treatment is that of the doctrinaire who has distinct theories of therapeutics for every distinct symptom, and rigidly moulds himself by force of will

into the appropriate moral attitude for every patient put under his care.

‘These remarks have more bearing than may at first appear on Mr. Hill’s Charge to the Birmingham Grand Jury. In that speech he advocates what we should call a distinct onesided and doctrinaire method of dealing with convicted criminals under sentence. Mr. Hill, as is well known, is one of the school who regard a prison as a moral hospital, and advocate not only for juvenile criminals but for all criminals, a purely medical treatment. Pain may and must be used—medically—like caustic, but for no other purpose whatever than the distinct purpose of cure. He notices the great difficulty introduced by the termination of transportation (without, however, taking notice of the real loss of power caused by the inability to open out to our convicts a quite new *career*), and then goes on to take into consideration the system to be substituted. On the ticket-of-leave system, by which those who conduct themselves well in prison are conditionally pardoned and set at liberty, under the liability, however, of being at any time recommitted to prison for the completion of their sentence if their conduct out of prison is not satisfactory, he makes some very good remarks; properly, we believe, ascribing much of its evil results to the weakness of the official authorities, who are too easily induced to grant tickets-of-leave, and far too reluctant to recall them. But Mr. Hill, in the zeal of his heart for his Reformatory Science, proposes a system of far more injurious tendency than the present. Speaking of the ticket-of-leave system, he says:—

“Gentlemen, if you desire, as I most earnestly do, to see this principle universally adopted, you must be prepared to strengthen the hands of Government by advocating such a change in the law as will enable those who administer the criminal justice of the country to retain in custody all such as are convicted of crime, *until they have, by sure and unequivocal tests, demonstrated that they have the will and the power to gain an honest livelihood when at large.* You must be content that they shall be retained until habits of industry are formed—until moderate skill in some useful occupation is acquired—*until the hard lesson of self-control is mastered*—in short, till the convict ceases to be a criminal, resolves to fulfil his duties both to God and to man, and has *surmounted all obstacles against carrying such resolutions into successful action.* But . . . what are

we to do with the incurable? Gentlemen, we must face this question; we must not flinch from answering that we propose to keep them in prison until they are released by death. You keep the maniac in a prison (which you call an asylum) under similar conditions; . . . if, Gentlemen, innocent misfortune may and must be so treated, why not thus deal with incorrigible depravity?’

‘The reformatory theory of punishment often runs almost into the same false extremes as the utilitarian theory of Bentham. It is well known that Bentham wanted to *counteract* temptation; and, therefore, proposed to load with the *most* heavy punishments those crimes to which there was *most* temptation, on the ground that some great after-pain was needed to keep in check a great desire. The consequence was, that his criminal legislation would have been an exact reversal of *justice*, punishing *most* heavily the *least* guilt, and, of course, would have brought about a revolution very quickly indeed. Now Mr. Hill’s reformatory theory—quite losing sight of guilt and justice—threatens us with the same danger. We are to give absolute power to a Secretary of State to keep the ‘incurable’ in prison, at will—till death, if he will. And who are to be the judges of curability? Who is to take the responsibility of saying that a criminal patient has, or has not, ‘mastered the hard lesson of self-control?’—has, or has not, ‘resolved to fulfil his duties both to God and man’—has, or has not, ‘surmounted all obstacles’ against carrying his good resolutions ‘into successful action?’ There can be no criterion except the good or bad guesses of persons who act on their own judgments (chaplains of gaols will be chiefly; we presume, the guiding and suggesting springs of this system), and who manufacture their own ‘*unequivocal tests.*’ Now, how can this system be redeemed from the fatal objection to Bentham’s system—that it will, in very many cases, punish the most guilty least, and the least guilty most? The most guilty are by no means always the most apparently incurable; still less are they the most likely to fall into new temptation; indeed the reverse is very often the case. Indolence, intemperance, extravagance, are the roots of the commoner and least heinous, and yet often of the most incurable offences. A really great crime committed by a cultivated man, from the depths of his evil heart, would generally give

few symptoms of incurability. That gentleman (Mr. Carden), who, in the south of Ireland, compassed with the most cold-blooded and selfish violence one of the greatest of crimes, would not, probably, if tried by Mr. Hill's tests, have needed detaining in prison at all longer than the tender anxiety of the Government for his health actually did detain him. What would be the class of deficiencies and moral dangers which Mr. Hill's doctrinaire system would discover the soonest, and detain the longest for cure? Just that superficial class which are, if the most mischievous, yet, under all circumstances, also frequently the least guilty,—want of temper, perhaps even want of honesty, and intemperate dispositions. The deep cruelty and profligacy of heart which needs a very special environment of circumstance to come out at all,—and which, when most evil, is fully under the control of a cold, self-possessed temperament, would be dismissed 'cured,' in a tenth part of the time needed to reform strong appetites for drink, or a quarrelsome nature. The character of the 'unequivocal tests,' by reference to which Mr. Hill proposes that official wisdom shall exercise the immense responsibility with which he entrusts it, may be gathered from the suggestion that the 'labour' voluntarily performed by a prisoner should hasten his discharge,—that he should be allowed, however, if he chooses, to take this extra labour out in an improved diet—but that such improvement of diet should delay, *pro tanto*, the period of liberty. Thus is the prisoner to be taught self-command and economy. It is clear that the deeper guilt, from which much crime results, could never be touched by this kind of 'treatment.' The practical result of Mr. Hill's proposed system would be to put an immense and irresponsible power into the hands of those moral 'physicians' of our prisons, who could only judge of cure by arbitrary and superficial symptoms, and who would be most likely to see the incurability, chiefly in cases of comparatively trifling guilt. The healing theory of punishment is almost as one-sided and dangerous as the *preventive* theory, unless strictly checked, and limited by regard to *justice* and guilt. No system can long *stand* that does not take in *justice*, that is, some *bonâ fide retributive* element for its central idea,—allowing 'prevention' and 'cure' only to be regarded as secondary and modifying considerations. Good or bad conduct *in prison* ought of course often to *affect* the duration of punishment,—but certainly ought *not* to be the principal element taken

into account. Let us not create a doctrinaire class of spiritual physicians with such fearfully important results attached to their diagnosis of the obscurest and deepest evil which can affect the human soul.'

The following article is from the *Weekly Dispatch*, Oct. 14th:—

'It is not at all too much to say, that the people of this country are justly indignant at that sense of insecurity and that infliction of positive loss which are the results of what is called, the 'Ticket-of-leave' system. The jauntiness of our present Premier, who has always been content to apply his ability and industry to one or two great matters, and to leave all the rest to shift for themselves, is in no small degree answerable for this. We will own that it was no easy task for a Home Secretary to devise a plan that would stand in place of the relief of the population by the transportation of its worst elements; what we principally complain of is, that the system devised has never been earnestly and thoroughly carried out. Men are sent back to their old haunts as the reward of shamming penitence to a chaplain, without the slightest real security for their not returning to their former course of life, with the additional desperation of knowing that it is their only one. As to the assertion that 80 or 90 per cent. of convicts with tickets-of-leave are permanently reformed, we look upon it as a gross imposition. Effects must have causes, and we can see none in the present method of procedure that can give anything like such results. The works of 'the ticket-of-leave' men in Scotland and in England are before our eyes in the police reports; and if we could believe that the number of their misdeeds is small, the ferocity of their doings is pre-eminent. Burglary, robbery with violence and murder, are among their latest achievements. Nobody in his senses could suppose that an acted religious penitence, exhibited before a prison chaplain, could be, in the slightest degree, a test of reformation. Industry and self-denial are the habits which distinguish honesty from crime, and these are of slow development, and require long time, indeed, for absolute proof, where they have to supplant contrary principles. It must be at all times a process of immense difficulty to replace a convicted man in a society where labour is plentiful and character is indispensable. The chances of reformation and renewed respectability were far greater where

all help was valuable, and where the temptation to work was full as great as the temptation to steal, where comparative solitude restored, in a degree, the natural inter-dependence of individuals. So was it under the most favourable circumstances, in our colonies. As it is, we must ourselves accept the task and its cost, and, above all, we must not throw away our money and our time by doing everything in a niggard and imperfect, and, therefore, hollow fashion. Mr. Hill, the Recorder of Birmingham, has delivered a very able Charge upon the subject to the Grand Jury there. He is a friend of the new system, but of the system as it ought to be, not as it is, marred and baffled by shortcomings. He enunciates principles, which, from having been long laid aside or neglected for false ones, have all the startling effect of novelty. Let us banish all difference about the mere titles of system, and look at the matter from these fundamental principles. Mr. Hill's main proposition is, that if you let a man out of prison, when you believe that he is thoroughly reformed, return him to society because you believe that society may henceforth trust him, you are bound, by the same rule, to keep him in prison until he gives proof of being an honest man, though that should be for a long or an indefinite period. We are departing certainly, by any mitigation of a sentence, from the old ground of punishment, that is of retributive vengeance, and of deterring the criminals by the example of a certain fixed quantity of pain to be endured. We have long ceased to hang out of the way those who were supposed to be worthless, mere nuisances to society, and irreclaimable professors of evil. And as we may not now remove such parties to another land, any more than to another world, we must deal with them as material that must be made useful, or at least harmless. Mr. Hill justly observes, that we shut up madmen, not because of the mischief they have done, but because of the mischief they will do; and society, if it undertakes to give the chance of becoming better to those who live only to offend against it and themselves, is, undoubtedly, entitled to protect itself fully from their actions during the process. The question of expense, at first glance, is a fearful one; but the fact is, that we are in the habit of submitting supinely to an infinitely greater and far worse levied tax. It is as plain as the surest figures can make it, that the thief out of prison costs the community three or four times as much as he

possibly can when within the walls. Indeed, there is no great computation necessary for the matter. Out of prison he lives, and often very expensively, and it is a rare thing for him to sell his plunder for a fourth of its value. He must, therefore, take immensely more from society than his prison keep. And when we recollect what the lottery of robbery is, how frequently it falls upon those to whom it brings the deepest distress, if not absolute ruin—when we remember the anxieties and the costly machinery of protection in the case of those who escape, we must perceive the waste entailed by crime as an enormity in political economy as monstrous as the offence is grievous against morals. Beyond this, we will not admit that the work of prisoners might not, in a great measure, be made sufficiently remunerative for their keep, and even their encouragement. All the cheapness of associated expense ought to be realized in the highest degree, and the scale of accommodation and food certainly ought to be the very simplest. The supplanting of honest labour by prison work is an argument quite out of date, or it ought to be by this time. If the contrary were the fact, the fault would not be in the prison, but out of the prison; and the remedy to be applied must be the general facilitation of industry, if not by positive legislation, by the removal of all laws and customs, taxation and policy, that thwart it. We feel, too, that the dealing with crime as disease has the warrant of the highest of all philosophy. We believe that this Christian principle is the only one that ever will solve the problem of evil, and combat its effects. Else how frequently must we punish the actions, which have their source, not in the culprit before us, but in his education, in the temptation into which he has been led intentionally by his very parents? This principle of reformatory imprisonment, however, must be kept quite distinct from another idea, started through another channel, of making solitary incarceration, upon bread and water, supersede public execution in the case of the murderer. This is suggested in the *Times* by a 'Physiologist,' who wishes to get rid of the debasing effect of capital punishment, and he adds that the process will not last long; that is, the criminal will soon die. Such a proposal ought to be memorized among the atrocities of science. Place brutal criminals in solitary cells, and keep them on such diet as will give no physical relief to the weariness of the mind, with the intention of humbling and humanizing them. Make the ruffian that ill-uses a wife or a

mistress thus pine for the sympathy of any human being. Possibly the method may succeed better than the lash; at all events it might be first tried. We should have much faith in it in many cases. But it is because we have this faith in its subduing power, that we would never condemn the worst criminal to die of it. He must have but a poor imagination that cannot picture to himself this prolonged agony, worse than that of the old monastic starvation for sins against chastity, inasmuch as it must be so incomparably more lingering. Conceive any human being merely fed, without seeing or hearing his gaoler, left in one place without employment, or the slightest hope of change. We believe that the Inquisition never equalled this refinement of torture. Without debating the question of capital punishment, if the criminal is to die, he has a right to die at once. If pain unwitnessed will reform, it is mercy; if not, it is pure barbarity. And the unutterable suffering would be the most terrible to the criminal who had yet some sensibilities undestroyed. The mere brute, perhaps, would only become a thorough idiot. We need not pursue the subject further; such a device will never be the law of England, or of any civilized country, unless it should happen to be tried in some wild frenzy of pseudo-philanthropy in the United States. But if we once admit that we are to reform in punishing—that we are to reform the criminal for good, how bitterly does the confession taunt all who withhold an industrial education from the yet innocent! Begin there, and you, at once and for ever, dispose of the question of doing an injustice by making crime a qualification for being taught and cared for. You must deal with the criminals you have suffered to grow up; but let the generation now being born begin anew. If industry and self-denial are the bases of a true reformation, it is because they are the foundations of an originally honest career. In the name of all that is good and true, merciful and sacred, cannot we agree to teach so much without sectarian squabbling? Cannot we keep our children out of prison without violating the claims of orthodoxy? Cannot we learn of that admirable example, in Westminster, who teaches his ragged scholars ‘nothing particular’ in the way of theology, and yet accomplishes the ends of all endurable theology, by making good men of them, and that out of the most unpromising class? And, almost beyond that, if we are, as indeed we must, to turn our

prisons into houses of reformation, or of perpetual detention, when obstinacy baffles all cure, how are we bound to receive the efforts of poor wretches who offer to reform themselves if they be only allowed the opportunity! Such are the thieves who declared to the Earl of Shaftesbury that their only desire was to leave their trade, but that no one gave them a chance of bread out of it, and the candidates for admission into Refuges, who are absolutely turned back for want of funds! Here we may deal with genuine cases at a tenth of the ordinary cost. We are sure of the largest percentage of results for the least outlay. No Old Bailey, no police, no magistrates, counsel, judges, come in for the largest share of the expenditure. Pending a discussion, which the public need as well as the public anger will force upon Parliament, private means may do much towards this best and easiest part of the work, and so lend great help towards that general solution of our difficulties, which it will tax all, and more than all, the administrative genius, candour, courage, and application of our home officials to provide.'

The *Era* contains an article entitled—

'MR. RECORDER HILL AND THE TICKET-OF-LEAVE SYSTEM.

'At the late opening of the Birmingham Court of Quarter Sessions, the Recorder, Mr. M. D. Hill, Q.C., well known for his interest in the reformatory punishment of criminals, delivered a long and able address, chiefly referring to the ticket-of-leave system. Nevertheless, with all Mr. Hill's practical knowledge of this subject, we confess that he has failed to convey to our mind a definite impression that things are working well under the present system, or that he has solved the great problem to his own satisfaction—'What is to be done with our convicts?' This most important question has been forced on public attention by the fact that only one British colony will now admit on its soil our criminal outcasts. Until lately, we shipped them without remorse or subsequent inquiry. The harsh Colonial Governor, to whose custody they were consigned, kept them in order by the manacle and the triangle, the armed sentry and the Cuban bloodhound. If, on the other hand, he happened to be a philanthropist, like Captain Maconochie, he remitted these torturing restraints, and maintained discipline by moral appeals. Norfolk Island was either a perfect hell, or else an interesting society of fallen human

beings, struggling, and not in vain, for a glimpse of a better state, according to the management of the local magistrate. It is because we can no longer shove these poor wretches out of sight that we have of late become so patient and merciful towards them. The repudiation of our colonies has compelled us to take charge of our own criminals; and the consequence has been that we have jumped from hard-hearted indifference to the possibility of their reformation, into the opposite extreme of sentimental sympathy with their penal lot.

‘For example, Mr. Hill’s moral sense does not seem to be shocked by the inconsistency of passing judicial sentence on a prisoner, which, except for his subsequent contumacy, is never to be inflicted. Nay, he would not only have the felon, who is doomed to seven years’ punishment, able to unloose his own bonds at the expiration of a twelvemonth or more, but he would make much lighter sentences equally dependent for their execution on the behaviour of the prisoner; and so altogether neutralize the preventive check to crime, which has hitherto existed in the knowledge that to particular crimes certain punishments were attached.

‘Again, Mr. Hill thinks that the chaplain is best qualified to judge of the repentance of the criminal. We are strongly of opinion that lay judgment should be invoked more prominently than it is in deciding on the sincerity of the prisoner’s penitence. Only recently we inspected one of the largest reformatory prisons in England, and the Ten Commandments over the communion-table, which faced the sittings of the prisoners, were painted in Old English characters, which would not be legible to half the criminals who could read common print; yet in this establishment there were two benevolent and worthy chaplains, who ought to have corrected so obvious a mistake.

‘Mr. Hill advocates the principle of making our prisons self-supporting, by the lucrative employment of those who are detained in them. But there really seems to be another side to this question, and the poor honest man may reasonably ask, ‘Why is the felon to be taught and encouraged in acquiring some skilful handicraft, which will support him as soon as he is released, to the detriment of those who have never erred, and who can scarcely maintain themselves for lack of employment at the same sort of work?’

‘The Recorder also alludes to estimates, which sanguinely

report that from 86 to 90 per cent. of convicts, discharged with tickets-of-leave, have been permanently reformed. It is true that he does not believe that such a result has really taken place, and in opposition to the statement, stands the recent complaint of Mr. Jardine, the London magistrate, that forty ticket-of-leave men infested the locality in which his Court was situated, whose influence was demoralizing the neighbourhood. On the whole, we gather from Mr. Hill's Address, that he wishes well to the new system, and hopes that it will succeed; but we cannot draw much comfort from all which he brings forward in its favour.

'In our judgment, there are several things inherently wrong in the new system of conditional manumission. In the first place, you should not treat and educate the felon better than you do the pauper. You should not make the prison more comfortable than the workhouse, to their respective inmates. Yet, at the former, you are now trying to elevate the feeling, before you dismiss the sojourner; whilst, at the latter, you try to drive him out, by making him ashamed of remaining, and too uncomfortable to remain. Thus your endeavour is to stigmatize poverty; and yet, at the same time, you try to rub the brand out of crime. Moreover, all the dignity and solemnity of the Judge's office are sacrificed if the sentence delivered by the venerable impersonation of moral rectitude be accompanied by a sly wink to the prisoner, which knowingly informs him, 'This means nothing at all.'

'What we would suggest is, that every judicial sentence should be fully executed. Behaviour under restraint might modify the weight of the punishment, and its manner of execution; but, only under most special circumstances, and in the rarest instances, ought liberty be granted to one who has forfeited his claim to citizenship. It should never be forgotten in this matter that the recent mercifulness extended by the ticket-of-leave is not the result of any higher motive than convenience. We do not know what to do with our convicts, and therefore we are releasing them prematurely from gaol. Employ them, we repeat, in labour which is only not undertaken because it will not pay. Make them hewers of wood and drawers of water, in proportion to their strength, on public works which are necessary to be done, but which remain dormant on account of the expense.

‘No doubt free labour is most profitable; but to this forced labour we would annex both wages and penalties. The personal comforts of the convict should improve with his docility and exertions; he should take rank amongst his fellows by his superiority of conduct; he should ultimately have a place in society secured for him if he sustained his term of punishment well. We English are sometimes too morbidly tender over punishment, and the detention of prisoners. Our Russian captives, making their pretty toys at Lewes, and selling them at absurd prices, whilst their officers are fêted and sport in the neighbourhood, find a different course of treatment at the hands of our brisk and sensible allies. In France, the Russian prisoners have been employed in the works going on in the harbour of Toulon; and every one knows that the *forçats* are employed to good purpose in various public works of France. The suggestions we have thrown out are slight and undigested; but we cannot recognise any matured convictions, and permanently tangible plan, in the well-considered and interesting speech of the Recorder of Birmingham.’

From the ‘Morning Chronicle’ of October 15th.

‘Meetings have been recently held in different parts of the country on the subject of Reformatory Institutions. It is a characteristic of our age and country, that a benevolent movement beginning in one corner, however remote or obscure, is not long allowed to remain dormant; but, if there be good therein, is taken up in other quarters, repeated and multiplied, till their influence pervades the land. Not less remarkable is it that all attempts to improve the social condition of the country, beginning, it may be, upon the surface of society, tend gradually to penetrate deeper and deeper among the inferior classes, till, as now, the very outcasts and pariahs of the community be reached.

‘It must be owned, however, that the experiments now so generally in progress to arrest the career of crime among our juvenile population, and to effect a reformation among those who have been tainted with its pollution, have been stimulated by other motives than those of purely disinterested benevolence. The truth is, the subject has become the great social problem of the day. On every side the question is asked—What is to be done with our criminals? Our fathers were not under our

difficulties with regard to an answer. Their method had the merit of being simple and summary—they hanged them out of hand! One can scarcely cast a glance over the statute-book as it stood about the beginning of this century without a shudder. As luxury increased, and the distance between the richer and poorer classes widened, property was regarded with a more jealous eye by those who held it, and a more envious one by those who were not so fortunate. Hence the necessity for new fences, and every one of those was smeared with blood. The evil increased gradually, and though it adds to the immortal credit of Goldsmith that, in his *Vicar of Wakefield*, he was among the first to raise his voice against the ever-increasing severity of our Draconian statute-book, yet his humane remonstrance was unheeded. Death punishment was extended year by year to smaller offences, till it reached a height which it is perfectly frightful to look back upon. It is little more than a quarter of a century since justice and more humane principles began to inspire our legislators. When men did allow themselves time to reflect upon the results of this system, it was found that it had failed utterly—that, far from deterring from crime, its only effect was to imbrute the lower classes of our population, and to render them as callous to instruction as they were superior to fear.

‘ Another course was then tried, with which we of the present generation are pretty familiar—the plan of transportation for a time. Great things were expected from such change. It had this advantage, that, equally with the former barbarous system, it removed the criminal population. A man once convicted, was still dead to the country; he was removed from offending the eyes, or injuring property, or assaulting the person. How they fared in the far-distant region to which they were removed, under what surveillance they were placed, or what means were adopted for their reformation, society at large took little heed. Matters might have gone on in this state for a considerable time—the mother country, year by year, raising a new crop of criminals which, year by year, was removed to regenerate or to fester in their original corruption, as the case might be, at the antipodes—but for one awkward circumstance. The spirit of colonization was awakened through the country, and multitudes of freemen, untainted with crime, went forth to seek a home in the land which had hitherto been devoted to the con-

vict. How much that process was precipitated by the discovery of the gold fields, it is needless here to say ; but it soon became evident that colonization and transportation could not go on together. The colonists were too numerous to need the work of the convicts—they were too proud to associate with them, and too wealthy to bear being plundered by them. The struggle between the Colonies and Colonial Office upon this subject is fresh in every one's recollection. It was sharp, but short and decisive. The home authorities were forced to give way, and the colonies were delivered from the spreading canker of being convict settlements.

‘ We have now, therefore, entered into a third phase of the question—a phase which promises to be as troublesome as any of those preceding. We now suffer in our own property and persons what we were disposed to treat so lightly when the colonists complained. We have to use up our own criminals ; and the great question is how, after having suffered the punishment of their offences, they are to be absorbed again into society with the least possible injury. It is a problem which may well engage the attention of the statesman as well as the philanthropist ; and at the threshold of the subject, as we now are, we cannot doubt that great improvements are yet to be effected. The present system, as our readers well know, is to hold out to our criminals inducements to reform, in the shape of a shortened duration of punishment, after which they are liberated with a ticket-of-leave ; the meaning of which is, that they are not absolutely set free—that their liberation is matter of sufferance only—and that if it shall appear to the police that they are not making a good use of their liberty, they are liable to be re-imprisoned, even though no offence be proved against them. We need not say here that the system has not been found to work well, for from all parts of the country complaints are heard against it. The end thereof has been to let loose upon society a band of fierce, determined ruffians, who hesitate at no crime, and are appalled by no punishment. The weak part of the system seems to lie in the test of repentance and reformation. As matters stand, we believe that is usually entrusted to the chaplain, who, with the best intentions and the most sagacious judgment, is continually apt to be deceived. Caged up as these men are from all the ordinary motives either to good or evil, there is no alternative but to trust to the profes-

sions of the lip ; and yet all experience suggests how such a test must necessarily be fallacious. The greatest scoundrel is usually the man who is the greatest adept in making a long face, turning up the whites of his eye, and affecting religious sentiment. Having succeeded in thus accomplishing his liberation, he will be the first to indulge in coarse ridicule of the simple-minded trust reposed in him by his ghostly adviser.

‘ It is evident that some more stringent test than this must be applied. Two sets of operations must be adopted, working from different points, but both converging to the same end—the one to cut off the supply of criminals, by taking up those who are in danger of lapsing into crime, and training them to be honest and useful members of society. This seems to be accomplished with considerable success by the different reformatory institutions throughout the country. But the other—and that with which we are at present most interested—is, how best to re-absorb into the industrious population our adult criminals who have grown mature in crime, but who are not, therefore, past hope of reformation. The present plan, we have seen, fails to secure that end. It must be obvious that the best plan can only be arrived at by a tentative process ; and we confess we are disposed to look with some favour on a scheme suggested the other day by Mr. Hill, the Recorder of Birmingham, in his Address at the Quarter Sessions in that town. Mr. Hill’s plan, as we understand it, is to estimate the amount of punishment of every offence by a money fine, which the prisoner must pay out of his own labour in gaol, and from no other source.

‘ A day’s labour in the gaol being estimated at a fixed amount, the prisoner is to be given to understand that he may, if he chooses, have a certain portion of his earnings to spend upon his personal comforts in prison ; but that if he does so, it will be at the cost of lengthening his imprisonment, as the fine will be so much the longer in being paid. In this way the prisoner will be stimulated, by the hope of a more rapid release, to control his appetites, to master his desire for personal indulgences, and so to obtain that amount of self-restraint which lies at the foundation of all the moral virtues. Such a measure of practical self-command carried through a course of months—it may be of years—would afford a test of reformation as stringent, perhaps, as any that could be applied within the precincts of a gaol. It might be safely inferred that if a man

refused to indulge his appetite when he might, within the walls of a gaol, he would be likely to continue the same course outside. Other tests will no doubt be suggested by the practical experience of those conversant with our prisons ; and we are not without the hope that by their application and beneficial effect, the alarm which has overspread society, from the letting loose of so many ticket-of-leave men without due security being had for their good conduct, may speedily pass away.'

From the 'Daily News,' October 19th.

'What is this *ticket-of-leave system*, on the merits and demerits of which the doctors of the criminal law are just now differing so widely, and whose operation for good or evil seems in a fair way of becoming one of the most important social problems of our day? For the benefit of those amongst our readers who feel themselves called on to take a part in the argument for or against the system, we propose to state, as briefly and clearly as we can, the principles on which it rests—the circumstances of its first introduction amongst us—what it is as established and introduced into the penal legislation of the United Kingdom by the Act of 1853—and what it is as actually carried out in practice since that statute became the law of the land.

'The principles on which the system rests—as we find them well and clearly stated by Mr. Matthew Davenport Hill, in that Address of his to the Birmingham Grand Jury, which has already excited so considerable an amount of attention and comment—are these: 'First, that the criminal should have the opportunity of working his way out of gaol; and, second, that he should, for a limited period, be liable to be deprived of his liberty so regained, if his course of life should give reasonable ground for the belief that he had relapsed into criminal habits.' Such are the two principles on which the whole system proceeds—principles themselves based on the notion that punishment is to be reformatory, not vindictive, and that no mode of reformation can be so satisfactory as that which the criminal works out for himself when sensible that he is under a moral government where not only will increased severity be the penalty of misdoing, but remission of a portion of his sentence will be the reward of doing well.

‘ This system of moral government by rewards as well as by punishments, applied to the management of our criminals, was in extensive operation in our Australian colonies for some years previous to the period at which transportation, as a general mode of punishment, had to be abandoned. The time, however, arrived, when the colonists refused, by large majorities, to tolerate any further influx of convict population. For some few years immediately preceding 1853, it had become practically impossible to carry out sentences of transportation, except on a small percentage of aggravated cases, and then only in those few districts which, in the same class of cases, still remain available, and are still employed for the purposes of penal settlements. In 1853 the Act passed (16 & 17 Vic., cap. 99), which now regulates the law on this subject, and first introduced the ticket-of-leave system into the penal jurisprudence, not of the British empire (for, as we have seen, it had already existed in Australia), but of the United Kingdom.

‘ Now, what is the ticket-of-leave system, as established by this Act ?—an Act, be it observed, the object of which is not to abolish transportation altogether, but, as its title cautiously and correctly expresses it, ‘ to substitute *in certain cases* other punishments in lieu of transportation.’ The substance of the Act is this :—All convicted persons who would have been liable, before the Act passed, *to transportation for life*, or for any period beyond fourteen years—are liable to be (but need not necessarily be) transported still. No person who, before the Act passed, would have been liable to a sentence of less than fourteen years’ transportation, can, since that time, be transported at all ; but, instead of transportation, he is to be sentenced to what the Act terms *Penal Servitude* for terms of imprisonment varying in duration according to the different periods of time for which he might, under the former system, have been transported, but in no case equalling those periods in length. *Penal servitude*, as established by the Act, is imprisonment, with—as in ordinary cases—an important addition, which makes the peculiar feature of the new Act, and constitutes the ticket-of-leave system, as far as it is defined by the Legislature. The clauses introducing this system—the ninth, tenth, and eleventh of the Act—respectively empower her Majesty, by ‘ writing, under the hand and seal of one of her principal Secretaries of

State,' in all cases where a convict shall be under sentence, either of penal servitude *or of transportation*, whether the latter sentence shall have been passed before or since the Act, to grant such convict 'a licence to be at large in any part of the United Kingdom,' on such conditions and for such portions of his term of transportation or imprisonment as to her Majesty may seem fit. The tenth clause declares that the convict, after the licence is so granted to him, shall be at liberty to remain at large till it is revoked. The eleventh section provides, that 'if it shall please her Majesty' to revoke any such licence, the Secretary of State, by warrant under his hand and seal, shall signify to one of the police magistrates of the metropolis that the licence is revoked, and the magistrate is then to issue a second warrant for the apprehension of the convict, who, on being brought before him, is by virtue of a third warrant to be re-committed to the prison from which he was released by the licence, there to undergo the remainder of his sentence. It is only necessary to add that the certificate on which the licence is printed is called the *ticket-of-leave*, and we are in a position to give an answer to the question, what is the ticket-of-leave system, as far as it depends on positive enactment? Shortly this: in all cases where a convict is sentenced, either to transportation or penal servitude, the Crown, for any reasons it deems sufficient, may grant the convict a licence to be at large—or, in popular language, a ticket-of-leave; and that licence the Crown may revoke at its own will and pleasure, and, without the commission of any fresh offence, or the necessity of any legal investigation, may cause the re-commitment of the ticket-of-leave man on the warrants of the police magistrate.

'Such, then, is the ticket-of-leave system as established by law: what is it as carried out in practice? It will be observed that the Act empowers her Majesty to grant the licence to be at large, or, as we had better at once call it, the ticket-of-leave, without attempting to define or limit the conditions under which such power is to be exercised. The Legislature has not attempted to lay down any definite test by which to ascertain the fitness of the convict to receive a ticket-of-leave; and the practice in this respect is somewhat unfixed and indefinite. Propriety and general good conduct are broad terms, within whose convenient latitude much mistaken lenity may find scope

for its exercise on the one side—much plausible knavery, on the other. The test of industry is surer; and the method of opening an account with each prisoner, and placing to his credit the real or assumed value of his labour, so as to provide a fund for him on his liberation, appears to be probably as free from objection as any that has yet been suggested. The degree of relative importance given to the respective tests of good conduct and of industry will of course vary considerably with the management of each separate establishment. Nor would it on this head be possible to give any other general account of the practical working of the ticket-of-leave system than by stating that both the one and the other test are professedly taken into consideration before granting a ticket-of-leave. In one very material respect the ticket-of-leave system, as carried out in practice, varies from that established by the Act. By the Act, as we have seen, the licence may be revoked, and the ticket-of-leave man be recommitted at the mere pleasure of the Crown, and on the simple warrant of the magistrate, without the necessity of any fresh investigation or the proof of any fresh substantive offence. To the same purpose the condition set forth on the printed ticket-of-leave itself expressly states: ‘To produce a forfeiture of the licence, it is by no means necessary that the holder should be convicted of any new offence. If he associates with notoriously bad characters, leads an idle and dissolute life, or has no visible means of obtaining an honest livelihood, &c., it will be assumed that he is about to relapse into crime, and he will be at once apprehended, and re-committed to prison under his original sentence.’ Yet notwithstanding this, whether, as Mr. Hill suggests, ‘because it is repugnant to the spirit of our laws to condemn without a trial,’ or whether, as Mr. Jardine very plausibly suggests, in consequence of the cumbrous and costly machinery of the three warrants so absurdly rendered necessary by one of the clauses already referred to—from whatever cause it may arise, the fact is that the practice and the law in this respect differ, and the instances are very rare in which a ticket-of-leave man is re-committed, except upon legal proof before the ordinary tribunals of some fresh substantive offence. Such are the principal points to be noticed as to the working of the system in every-day practice.

‘How many of our readers have followed us through this

detail? Possibly very few. Those who have done so with attention will at all events be better able to exercise their own judgment on the views we may hereafter be called upon to lay before them when dealing with the vexed question of the real nature and extent of those merits and demerits which it is the fashion of the day to ascribe to the ticket-of-leave system.'

From the 'Spectator' of October 20th.

'PENAL SERVITUDE REFORM.

'The secondary discussion on the subject of penal servitude has already made such progress since its very recent commencement, that we are not surprised when we hear of proceedings which render it probable that the subject may be raised in Parliament next session, and perhaps even settled then. As we observed last week, there are always two stages in discussions of the kind,—one limited to those who take the initiative, and perform the preliminary work of supplying intelligence and argument for leading minds; the other, when the public at large seizes the main ideas, and assists at a legislative settlement. It is scarcely three months since the most widely circulated exponent of public opinion in this country, the *Times*, condemned the conclusion of Lord St. Leonards that the ticket-of-leave system was a failure, and remarked that, 'before his general conclusion can be established, we ought, at any rate, to be shown the way to something better.' The way to something better has, by this time, been indicated, through those who have assisted in defending the *principles* of the ticket-of-leave system, and establishing the indefensible character of its *arrangement*. The judgment upon the system delivered by Mr. Jardine, the Recorder of Bath, is a further evidence that practical men see how impossible it will be to continue unamended an arrangement which does not provide permanently for relieving society from hardened criminals, but actually supplies them with licence to perambulate the country and repeat their crimes, or perhaps to carry on the more mischievous trade of teaching others how to perform crime for them. Mr. Jardine pronounced the ticket-of-leave system exceedingly 'dangerous,' and 'the system of discharging prisoners merely because the gaols are full,' with an ill-considered selection of

those to be freed, 'pregnant with difficulties, and dangerous to the society in which it is practised.' At the same time, the failure of the attempt to establish a reformatory institution in Worcestershire proves that 'society,' organized as it is, under our present lax county system, is not competent to take the matter into its own hands. It remains, therefore, with Government; but the case is so pressing, and so distinct, that we ought not to be at the mercy of the ordinary official inertia.

'Even within the three months some progress has been made in sketching out an ulterior system. It was in July that the *Times* discussed the Duke of Cambridge's objection to admitting the convicts into the army, deprecating any course which would finally condemn the men.

'If the services of these men, presumed to be either reformed, or in fair way of reformation, and who, in many cases, might be very eager to obliterate former stains by extraordinary good conduct, are sweepingly rejected in that very calling where men are wanted, where discipline is most continuous, and where the greatest chances of personal distinction are offered, is it not reasonable to suppose that private employers might adopt a similar rule, and that there might thus be an end to the very opportunities which we are labouring to provide?'

'It was in the same paper that our contemporary agreed with Lord St. Leonards in desiring a more complete surveillance over the liberated convicts, and a more accurate insight into the results of the system. We still keenly feel both these requirements, but with a fairer prospect of attaining them. Even then it was perceived that a full chance must be retained for the men, but that their labour must not be wasted, nor their depravity return uncorrected into society. The three months that have passed have only confirmed these conclusions, and we find a general tendency in opinion to agree that some mode should be arranged, by which the discipline of military life should be combined with industrial discipline, and by which rude material for the labour of the men should be provided without injury to the market of ordinary labour. We have only to state these requirements in order to arrive at something like a sketch of the plan which may be easily pursued. It has always been found that a system of strict abnegation is quite sufficient to secure the voluntary enlistment of men or boys in industrial avocations.

Solitary confinement, without anything to do, is enough. Place any class of men in that condition, and they *desire* labour as a relief; let their condition for the time, and their liberation ultimately, depend upon their labour, and they labour with zeal as well as with willingness. Practical experience has confirmed what must be the conclusion of *à priori* calculations. Now it is not difficult to find fields in which men, under custody, could be employed without trenching upon the production of the free labourer. We have many kinds of hard work to be performed in this country, which might very well constitute *travaux forcés*, and our imprisoned convicts could readily be converted into *forçats* without repeating the horrible atrocities that have resulted from a bad system of *travaux forcés* in France. Here are the elements for any system which should combine the present principles of penal servitude with a protracted detention of the men, but without an increase to the nett expense.

‘Colonel Jebb has published a letter which upholds the present system as having worked wonders, and at the same time he announces that Government intends to modify the system in practice, so as to suspend one of its most characteristic incidents—the tickets-of-leave! Colonel Jebb, therefore, gives his official authority to the opinion, that so far as the principles of the system have been really applied, they have worked beneficially; but in announcing that Government intends to suspend the operation of the law so far, he supplies us with an official confession that there is something seriously defective in the practice. Of course, we can regard the modification that he announces as nothing but a temporary rule—it is in fact suspending the subject until it can be considered by Parliament. . . . It cannot be for a moment imagined that because Government partially suspend the working of a defective measure, it is intended to stultify the principles which their own officer finds so much reason to defend; or that they intend to go back to some very absurd and barbarous system which prevailed before recent reforms. We are well aware, that at the present time leading members of the Administration cannot find leisure of mind for the whole of a difficult, large, and time-consuming subject like this: as well expect the Secretary of State for Foreign Affairs to prepare a scheme of law-reform. The question is precisely in that state which would justify the appoint-

ment of a Commission. It so happens that there are public men whose antecedents have qualified them to deal with this subject, and who possess the confidence of all parties in the country; and Government might, without the slightest delay or difficulty, frame such a Commission, that the mere statement of the names would secure to it the perfect trust of public and of Parliament.'

The cry which prevailed against convicts being discharged on the good report of the chaplain, was founded on a mistake as to the fact. It clearly appears from the evidence before the Transportation Committee, that the conduct of the prisoners is recorded from time to time by the officers who have charge of them; and that the opinion of the chaplain, although it may be taken into account in connexion with the record, has no undue preponderance, if indeed it has quite the influence to which it is entitled. There may be defects in the mode of keeping the account, for aught I know to the contrary; the main defect, however, is one pointed out in the next Charge, viz.—that passing a certain length of *time* under probation, earns the privilege of discharge on ticket-of-leave; and not the active and strenuous endeavours of the prisoner to do right. True it is, that very reprehensible conduct on the part of the prisoner delays for some period—in practice not a long one—the grant of his licence. But although demerit may act as a disqualification, the rule which makes time the chief element, must necessarily have a soporific tendency, under circumstances in which the sharpest stimulus is required, to urge the prisoner to the task of self-improvement.

The reference in the Charge, to the Committee of the House of Commons obtained in the year 1850,* by Mr. Charles Pearson, Solicitor to the city of London, and at that time representing the borough of Lambeth, is one which calls for a remark or two.

The object of that inquiry was mainly to consider the very important evidence, adduced by Mr. Pearson, to prove that prisons where the site was properly chosen, and the construction adapted to the end proposed, might be made self-supporting.

It is difficult to account for the oblivion into which this

* Select Committee on Prison Discipline, House of Commons, 1850.

project has fallen, notwithstanding its practicability was abundantly proved by witnesses, each conversant with the department on which he gave his evidence.

The adhesion to the scheme of such a witness as Mr. Chesterton, who, for twenty-five years, was the governor of Coldbath Fields Prison, said to be the largest in the world, ought of itself to ensure the project a fair trial. 'Already,' says Mr. Chesterton, 'has another plan been propounded, with a view to meet the general exigencies of the State, since transportation has become no longer available. The plan of Mr. Charles Pearson, which was thoroughly sifted in the Session of 1850, by the Committee of the House of Commons, of which Mr. E. Denison was chairman, is worthy of the most attentive consideration. As a measure of universal application, it appears to me to suit the entire subject, and would relieve the Government from all the difficulties which arise from the adoption of different modes, and temporary expedients.

'A thousand acres for a thousand prisoners, constitutes the main feature of the design, and with such an area Mr. Pearson proved, step by step, the practicability of furnishing all that the entire establishment would require to consume, defray the totality of the expense, and yield a good profit to the State. I was examined at great length to show how the discipline might, in such circumstances, be maintained; and there was not a proposition in the scheme which was not sustained by the testimony of competent witnesses. Nor did it exhibit any niggardly spirit in the allotment of officers. The proposed staff was ample; and, in deducing results, every part of the estimate appeared to be computed on a liberal scale, so as to guard against ulterior disappointment.'*

The proposition that criminals ought to be detained in custody until they are cured, seems to follow as a natural corollary from the doctrine that they ought to be allowed and urged to make their way out of prison by their own merits.

If the opportunity be afforded to the convict to prove that the necessity manifested by his crime for secluding him from

* *Revelations of Prison Life.* By George Laval Chesterton. Hurst and Blackett, London, 1856. Vol. ii. p. 6.

society, and thereby incapacitating him from repeating his offence, is at an end, why not retain him until he has established his right to liberty by such proof—that is to say, by proof that his discharge will not militate against the public security? In 1839 this view of the subject was propounded by Mr. Frederic Hill, who, in his Fourth Report on Scotch Prisons, says, ‘As regards the question, how are convicts to be disposed of after their release from prison, supposing transportation to be abolished, I would humbly suggest that it is desirable that those whom, from the nature and circumstances of their offences, as shown upon their trial, there can be no reasonable hope of reforming, should be kept in confinement through the remainder of their lives; the severity of their discipline, however, being relaxed in various ways, which would not be safe were it intended that they should return again to society.’ *

This opinion is maintained in succeeding Reports. In that of 1843, there are persons, he says, ‘who are wholly unfit for self-government, and who should be placed permanently under control. Some striking instances of this will be found in the Report on the Prison of Newcastle, and in that of Perth.’†

The passages referred to are as follows:—‘There was a young woman in the prison who had been there several times, and who was described as industrious and well-behaved when in prison, but as unable to resist the temptation to drink when out, and who, to gratify this passion, and to procure food, frequently stole.’‡ * * * *

‘There is a woman now in prison for the eleventh time, who, when in confinement, is hard-working and well-conducted, but who soon gets into trouble when at large; and there is another woman who has the same character for good conduct in prison, and bad conduct out of it, who is in for the twenty-fourth time; and another (who happens, however, to be at present out of prison) who has been in thirty-one times. I saw, also, a man who was described as civil, obliging, and hard-working when in prison (and consequently sober), but who was said to

* Fourth Report of the Inspector of Prisons for Scotland, p. v.

† Eighth Report of the Inspector of Scotch Prisons, p. 15.

‡ *Ibid*, p. 58.

be quite mad when drunk, who has been in thirty-seven times, thirty-one of which were for assaults.' *

In 1846 the doctrine was submitted to the Society for the Amendment of the Law, in a Draft Report on the Principles of Punishment. 'The right to isolate an individual from society is founded on its being repugnant to the welfare of the one or the other of the parties, or of both, that they should be together until a change is wrought in the individual. If, however, he is so constituted as to resist this beneficial change, the reasons for retaining him in a state of separation, instead of being removed, gather strength. There is oftentimes, however, a wide interval judiciously left between theory and practice. It is by no means necessary to the practical adoption of the reformatory principle, that it should be carried into extremes. Every sentence might still be for a term of imprisonment measured by time, if that term were always made of sufficient length to enable every prisoner to work his way out of gaol by conduct and industry before its expiration. The consequence of this arrangement would be, that resistance to reformation would only postpone the liberation of the prisoner for a time certain, and not for an indefinite period. We have no doubt that in the end the public would be startled with the absurdity of sending forth persons who, having been withdrawn from society by reason of their unfitness for it, are restored upon proof that such unfitness is permanent, and cannot be removed.' †

I will quote Mr. Chesterton on this subject:—

'England, deprived of an outlet for her convicts, must devise the means for even *perpetual* imprisonment, and I know how inadequate is the system of separation to meet the requirement; nor is the silent discipline, in its hitherto restricted organization, a whit more applicable to the altered circumstances in which the country is placed.' ‡

The principle is essentially involved in the system of Captain

* Eighth Report of the Inspector of Scotch Prisons, p. 91.

† Draft Report on the Principles of Punishment. By Matthew Davenport Hill. 1847. p. 13.

‡ *Revelations of Prison Life*. Vol. ii., p. 50.

Maconochie. The reader has seen that the *Spectator* has advocated it for many years; and that it has now the concurrence of the *Times*, and other journals. Mr. Stuart Wortley, the present Solicitor-General,* may be ranked among its supporters, as appears by the questions which he proposed to me in the Transportation Committee so often mentioned.

‘1878. *Mr. Wortley*—In answer to the Chairman, you stated that you thought the principle of holding out hope to a criminal in a prison was in all cases essential; have you considered whether there is not a class (a small one, I hope) to whom that measure cannot really and effectually be applied at all, and whether it is not the fact that there is a class who for the safety of society might justly be retained in safe keeping, like lunatics and others, for the rest of their lives?—I would hold out hope to them; but if they did not avail themselves of that hope, and amend their conduct, I have already stated, but I think it was before the right honourable member arrived, that I am prepared to face the question of confining them for the whole of their lives like lunatics.

‘1879. Now that it is likely, or at all events possible, that we may be deprived of the means of employing transportation as a punishment, and removing criminals altogether from the country for their lives, have you contemplated the possibility of some establishment, either in this country, or on the coasts of this country, within reach of frequent inspection, where persons of that hopeless character might be detained, and kept in safe custody for the rest of their lives?—I am entirely of that opinion; and I think that such custody need not be made very painful; that they may have all such indulgences as their unhappy state permits, short of turning them out again upon society.

‘1880. It would be necessary that their confinement should not be made painful, nor even very close, would it not, with a view to their health?—I should say so. I know that there are many persons who are not considered by medical men lunatics, who are entirely destitute of the power of self-government; they are happier, or at least less unhappy, when in confinement than when at large; and I have known several

* December, 1856.

instances of persons who seem to have an instinctive knowledge of their infirmity, and the moment they get out of prison they take means to go back. Mr. Frederic Hill, the late Inspector of Prisons for Scotland, my brother, details the case of a woman who had been committed, I think, ninety times; she certainly was sent to prison for very small offences, and, when discharged, she rarely, according to my recollection of what he says, went a street's length but she broke a window, or committed some act for the purpose of being sent back; with the avowed intention of being sent back.

'1881. I referred rather to criminals of the higher class, who had committed so many offences as to render them incapable of reform, inasmuch as, even if they tried, their circumstances would prevent it?—I quite adopt the suggestion of the right honourable member; there is such a class; and having exhausted all the means of reform upon them, and found that those means produced no good effect, I am prepared, for one, to see the Legislature empower the Executive to detain them for their lives.

'1882. I know that you have studied these matters very much; have you, in the course of that study, met with any information as to the practical application of that principle in any country of Europe or America?—I think not, directly; but I find by the return from Munich, that there is a class of prisoners in Bavaria who receive a sentence for an uncertain period; it is not a sentence of imprisonment for life, for there is another class who are expressly sentenced to imprisonment for life.

'1883. *Chairman*—What is the form of the sentence for an uncertain period?—That I cannot tell you; but I will read, if you will allow me, what is said upon it; he is called, in the paper which I have handed in, 'The criminal sentenced to penal servitude for an unfixed period.' I should mention that the translator was a German gentleman, and he took 'penal servitude' as the nearest English equivalent which he could find. This paper also says: 'The criminal laws of Bavaria include the following punishments of personal restraint:—1. The sentence of the chain, which can only be awarded for life. The criminal sentenced to this punishment is fettered on both his feet by a long chain, to which a heavy iron ball is attached.

2. The punishment of penal servitude, which is never awarded for life, but either for a fixed number of years or for an unfixed period. The criminal sentenced to penal servitude for a time not specified, may, after sixteen years' imprisonment, expect his liberation on the conditions named under section 7.* Section 7 is: 'According to the laws of Bavaria, industry and good conduct shorten the terms of imprisonment, according to the following rule. The criminal sentenced to penal servitude for an unfixed period may expect his pardon after sixteen years' imprisonment, if, during his incarceration, or at any rate for ten years, he have shown continually extreme industry, not have incurred punishment for malice or insubordination, and otherwise have given evident proofs of his reformation. Offenders sentenced to fixed terms of penal servitude, or to the House of Correction, can, under the same conditions, shorten their terms of punishment, and may expect that mercy will be extended to them after having been imprisoned three-fourths of their time.'* *

The foregoing extract shows that the proposal to confine criminals once convicted, until they have proved their fitness for liberty, is not an untried speculation; but that the principle is already in action.

The following answers by Mr. Under-Secretary Waddington present the only objections to the plan which could be adduced by a gentleman of great ability and long experience:—

'173. *Mr. Wortley*—From your experience, are you of opinion that there is a large class of confirmed criminals in whom all hope of reformation is delusive?—I am afraid that there is such a class; I hope it is not very large, but it exists beyond all doubt.

'174. Under the severer code which existed in this country formerly, a large number of those persons were withdrawn from society by the punishment of death?—Certainly that was so.

'175. Has it ever been a matter of consideration with the Government, whether it would not be possible to devise at home, or in the immediate neighbourhood of home, in some of

* Transportation Committee, House of Commons, 1856. Second Report. pp. 18-19.

the islands, a place of detention where, consistently with the preservation of health, that class might be confined for life?—The question has been undoubtedly mooted, and more than once; but I do not think it has been very seriously brought under the consideration of the Government. I have never been a party to any discussions or deliberations upon that subject.

‘ 176. Is it not found that, under the strict discipline of our prisons, the human frame and understanding will not bear confinement beyond a certain period?—It will not bear solitary confinement beyond a certain period, certainly.

‘ 177. Nor strict confinement?—Nor strict confinement. I suppose that the period of associated labour in the open air might be prolonged to any length.

‘ 178. Is it not, on the other hand, found that many criminals who have been confined as lunatics, are to a great extent cured of their lunacy, and become in good bodily health, and live to a very old age, in confinement?—There are many such cases, no doubt. There is a certain character of mind in which confinement produces a depression, which very often leads to delusions, and ultimately to confirmed lunacy.

‘ 179. Do you see any reason why, with respect to that class to which I refer, it should not be attempted to subject them, in the first instance, to the severe punishment of penal servitude, and then, during the remainder of their lives, that they should only be subject to such control, in some place of seclusion and healthy confinement, as would insure their not escaping?—It would be a very benevolent arrangement, if it could be done; how far it is exactly practicable I do not know. The French, we know, have had a totally different system: they have made their confinements for life as severely penal as they possibly could.

‘ 180. The great alarm, whether well founded or not, which has been raised by the present system of tickets-of-leave, arises from the fear of that class of persons being turned upon society, does it not?—That is so, no doubt.

‘ 181. They being turned upon society necessarily within the limits of this country, whereas in former times there was the chance of their remaining abroad?—Certainly; the impression is, that there are a very large number of them who are in

no way reclaimed by discipline, and that those persons are again taking to crime, and joining with their old associates; thus ultimately forming an immense number of criminals, whom it will be impossible to keep under any control.

‘ 182. On the other hand, with those classes of criminals who are not hopeless, transportation affords the best hope of redeeming their character and reclaiming their mind?—By far the best.

‘ 183. That if the worst characters were retained here for life, instead of being, as they are under the present system, transported for a period of ten or fifteen years, it would be possible, even with the present outlets which we have, to send those persons abroad in whom there is a hope of reformation, would it not?—It might be done, certainly; but that is regarding transportation in a view which has not been generally taken of it. The great object of transportation, no doubt, has been to relieve this country of the worst offenders; no doubt it is also extremely beneficial to all offenders, whether the worst or the least depraved; but I should think that the plan of keeping the worst offenders here, and imprisoning them for life, would not be one which would be likely to meet with the approbation of the public. I think there would be a great feeling against long imprisonment.

‘ 184. It is done in almost all other countries, I believe?—It is, I know; we have generally looked upon it with very great dislike.

‘ 185. Has not that feeling arisen very much from the belief that you cannot inflict close confinement without injury to the health?—Yes, I dare say that is so.

‘ 186. Then if confinement after a certain period were of a mitigated character, only sufficient for security, might not that feeling be also mitigated to some extent?—Still it is a very frightful punishment under any circumstances, inflicting civil death upon a man without the slightest hope: it seems to be the great objection to that sort of punishment, that it does not give the slightest hope to a man; it destroys every feeling which can render life in any respect desirable, or even tolerable.

‘ 187. Then if I collect your opinion, it is rather that public

opinion would not bear a punishment of that sort?—I confess it is rather so.*

‘To inflict civil death upon a man without the slightest hope,’ would be, no doubt, ‘a very frightful punishment;’ but my proposal by no means deprives any prisoner of hope, because his power of liberating himself by industry and good conduct is never taken away from him; and until his death actually occurs, none can say that his imprisonment will extend to the close of his life. If, therefore, the public shrink from the infliction of such imprisonments, the sooner it ceases to complain of the outrages which fill the newspapers, so much the better will it evince its consistency.

* First Report of Committee on Transportation, House of Commons, 1856. p. 17.

CHARGE OF OCTOBER, 1856.

ON THE RESOLUTIONS OF THE SELECT COMMITTEE ON TRANSPORTATION, APPOINTED BY THE HOUSE OF COMMONS IN THE PRECEDING SESSION.*

GENTLEMEN OF THE GRAND JURY,

AT the Michaelmas Sessions of the last year, I submitted to your predecessors observations on the working of a very important statute, passed in 1853, which is usually called the Ticket-of-leave Act; its characteristic feature being the authority which it vests in the Crown to grant to convicts under sentence of transportation, or penal servitude, a revocable ticket, permitting them to go at large prior to the expiration of their sentences. At the date of my Charge, notwithstanding returns had been laid before Parliament, setting forth that from eighty to ninety per cent. of prisoners thus liberated had so conducted themselves, since they became their own masters, as not to fall again under the censure of a criminal court, the public mind was far from satisfied with the results of the measure; not that the reclamation of from eighty to ninety per cent. of our criminal population would not have been hailed as triumphant success, but, unfortunately, proof by figures of arithmetic, when applied to subjects of this nature, is not much more readily accepted by the English mind than proof by figures of rhetoric. Adverse opinions had become so widely spread that a cry was raised for a repeal of the Act; and certainly, Gentlemen, if the merits of the question had turned upon the accuracy of these figures, it will become tolerably evident, before I cease to address you, that the public had but too much reason for its hardness of belief. But I shall also show you that the repudiation of these statistics ought by no means to draw after it a condemnation of the measure. I will confess to you that I watched the growing unpopularity of the Act, not merely with anxiety, but with alarm. However imperfectly the law is framed, and how-

* First, Second, and Third Reports of the Transportation Committee, House of Commons, Session 1856.

ever open to animadversion the manner in which it has been carried into effect, it nevertheless embodies two principles, each founded, as I must think, on just and enlightened views of jurisprudence. The first is to enable the criminal to work out his freedom for himself, by exhibiting proof that he is an altered man, and that he has become imbued with qualities, the absence of which led to his fall. The second to make the discharge only a conditional restoration to liberty. He is not, for the remainder of the term to which his sentence extends, to be placed on a footing with his fellow-citizens. The theory of the law is, that he has been set at large because his conduct in prison has induced the belief that he is reformed. But if his course of life should be such as to destroy that confidence, he is again to be returned to his probation in the gaol.

An additional year of experience in the operation of this law, and a careful consideration of the various facts and arguments which have been elicited in the debates in Parliament, the examinations of witnesses, and the discussions in the public press, have confirmed the opinion which I then held. This result will indeed be a matter of little moment to any one except myself; but, Gentlemen, I am able to support the conclusions at which I myself had arrived, by no less an authority than that of the Committee, appointed by the House of Commons during the last session, to investigate the working of the Act. That body, composed as it was of men who had made the administration of the criminal law a careful study for many years, came to the following resolution:—‘That the system [of granting tickets-of-leave] appears to be founded upon a principle wise and just in itself, viz., that of enabling a convict to obtain, by continued good conduct while undergoing his punishment, the remission of a portion of his sentence; upon the express condition, however, that in case of subsequent misconduct, his liability to punishment shall revive for the residue of the term specified in the original sentence.’

The Committee, Gentlemen, recommended not only the continuance, but the expansion, of the system. The statute embraced all convicts adjudged to transportation, or to the milder punishment of penal servitude, usually applied in cases not sufficiently aggravated to call for the higher infliction; but it excluded all minor offenders. The Executive Government,

however, still further narrowed the limits of the privilege ; and instead of pursuing the line adopted by the statute, stretched the exclusion to the class of convicts adjudged to penal servitude. The ground, Gentlemen, on which the framers of the Act had submitted it for adoption by the Legislature was the efficiency of encouragement in stimulating the convict to industry and good conduct. That being so, the Committee suffered, as I had suffered before them, under the inability to understand the justice of withholding from the lesser criminal the incentive to reformation held out to his more guilty fellow-prisoners, or to divine the policy of advertising our criminal population, that no member of it must indulge the hope of obtaining his liberty by a course of well-doing, unless he would first earn the right to such an encouragement by the enormity of his transgressions. And from the evidence, Gentlemen, of the Directors of Convict Prisons, it appeared that the men sentenced to penal servitude participated in that lack of penetration to which I have adverted ; so that, when they learnt that they were excluded from a boon granted to those who had sunk deeper into crime than themselves, they became morose, disobedient, and at length mutinous. It is needless to say, that in this frame of mind the progress of reformation came to a pause, and that retrogression began.

Perhaps, Gentlemen, you yourselves may be as much in the dark on the subject as others have been ; and may ask whence was this extraordinary doctrine imported into England. To such an inquiry I could give no satisfactory answer ; I am not acquainted with the jurisprudence of any nation, civilized or barbarous, which is deformed by such an inversion of the order dictated by natural justice. Nor do I know of any country, save two, which, having admitted the principle of encouragement into the treatment of their criminals, has ever abandoned it, or narrowed its application. The value of this principle is now recognised in many nations of Europe, and in many States of the great Republic across the Atlantic, and I feel confident that it is destined to make its way into the criminal code of every well-governed country in the world.

France and Spain are the states which have made a retrograde movement. France, to a small extent only ; and the error having been pointed out, and condemned by an eminent writer, who holds a very high, if not the highest position in the French

Judicature, it will probably be quickly amended. Convicts, who, with us, would be sentenced to transportation, are kept in France to hard labour for long terms of years. It has been the usage, however, of the Sovereign to issue, from time to time, pardons to the most deserving of these *forçats*, as they are called. Of late years, says M. de Beranger, the Judge to whom I have referred, these pardons have been more and more sparingly granted. Mark, Gentlemen, the consequence. The *forçats* are discouraged, and lose their energy. Their labour is become far less profitable, and their attempts to escape far more numerous.

The other country which I have excepted is Spain. Let me ask your attention to the good effects of encouragement in the Spanish prisons while it was in operation, and the evil consequences of withdrawing it. In the city of Valencia there has long been a penitentiary gaol, under the government of Colonel Montesinos, a gentleman who has made for himself a European reputation by his skill in the treatment of his prisoners. He acted upon them by urging them to self-reformation. He excited them to industry by allowing them a small portion of their earnings for their own immediate expenditure, under due regulations to prevent abuse. He enabled them to raise their position, stage after stage, by their perseverance in good conduct. When they had acquired his confidence, he entrusted them with commissions which carried them beyond the walls of their prison; relying on the moral influence which he had acquired over them to prevent their desertion. And, finally, he discharged them before the expiration of their sentences, when he had satisfied himself that they desired to do well, had acquired habits of patient labour, so much of skill in some useful occupation as would ensure employment, the inestimable faculty of self-denial—the power of saying ‘no’ to the tempter—and, in short, such a general control over the infirmities of their minds and their hearts, as should enable them to deserve and maintain the liberty which they had earned. His success was answerable to the wisdom and zeal of his administration. Instances of relapse but rarely occurred, and the Spanish Government, rightly judging that talent like his ought to have the widest scope, appointed him Inspector-General of all the prisons in Spain. It so happened, however, that the Legislature of that country was minded to establish a new criminal code; and (for what reason I know not) held it advisable to convert sentences

of imprisonment for long terms of years, which prevail on the Continent, into incarceration for life. This was done. But, unhappily, this was not the only, nor the most pernicious change. In the chapters of the new code which relate to the management of prisons, governors are prohibited from offering those encouragements to the prisoners which had raised them step by step until they were fitted for the enjoyment of liberty; and they also make it imperative that every sentence of imprisonment shall be fulfilled to the last hour. The combined effects of these innovations teem with instruction. Prisons which had been models of order and cleanliness, of cheerful industry, and of praiseworthy demeanour in general, now exhibit a painful contrast to that happy state of things; they have become the scenes of indolence, disorder, and filth; and the prisoners are either reduced to despair, or urged upon plots for escape, which, in a multitude of instances, are followed by success. Gentlemen, it will not be the fault of the Committee, if we fail to profit by this most instructive lesson. Let me read to you the conclusions at which they have arrived on this part of our subject. Their fifth resolution is:—

‘ 5. That every punishment by penal servitude should include, first, a certain fixed period of imprisonment and hard labour on public works to be undergone at all events; secondly, a further period, which should be capable of being abridged by the good conduct of the convict himself.

‘ 6. That it appears from the evidence before the Committee that bad effects upon the discipline of convicts on the public works, have already been caused by the regulations under which it has been made known that no tickets-of-leave or other remission of sentence would in any case be granted to men sentenced to penal servitude.

‘ 7. That with a view to give full effect to the principle indicated in Resolution 5, the sentences of penal servitude prescribed by that Act should be changed and lengthened, so as to be identical with the terms of transportation for which they are respectively substituted.

‘ 8. That the sentences of penal servitude now in force might be adopted with some few changes, as the fixed periods recommended in Resolution 5.

‘ 9. That the scale of secondary punishment would be more complete, if a shorter period of penal servitude than any now

in force were enacted, as an intermediate sentence between the present term of ordinary imprisonment now usually inflicted, and the former sentence of seven years' transportation or its equivalent.'

These resolutions may perhaps require some further explanation to enable their full bearing to be seen. You must know, Gentlemen, that the Bill of 1853, on its introduction into Parliament by the Lord Chancellor, was a measure which had for its object simply to enable the Courts to convert the punishment of transportation, which, owing to the opposition of our colonies, could only be acted upon to a limited extent, into imprisonment in our convict gaols and hulks, and labour on our public works, with the view of reserving transportation for heinous offences deserving a punishment all but capital; and rightly believing that the substituted punishment which was denominated penal servitude, is for equal periods of time an infliction much more grievous than transportation, when it converted the latter punishment into the former, it greatly diminished its duration. But while the Bill was passing through the House of Lords, it so happened that Earl Grey, who, when Colonial Minister, had had experience of the beneficial effect produced by tickets-of-leave in the Island of Barbadoes, suggested the expediency of trying a similar experiment in England. He spoke highly of the principle of encouragement, from his own observation; and he agreed with all who have a practical knowledge of prisoners, that no incitement can be held out to them which will bear any comparison for efficiency in stimulating them to good deeds, with that derived from the expectation of being restored to freedom. Listen, I pray you, to the opinion of the Rev. William Holderness, the chaplain of the Portland Prison, and a member of that exemplary body of men, whose labours and sacrifices, if they do not obtain for them their well-earned promotion in the church, will at all events ensure them respectful attention from every one competent to estimate the insight which their professional duties give them, into the characters of those who enjoy the advantage of their ministrations. 'As a general rule,' he says, 'the men sentenced to penal servitude have no hope of shortening their confinement, consequently a powerful incentive to good conduct is lost. It is to be feared that no adequate substitute for the hope of liberty can be devised. It is the love of liberty which lies nearest to

a prisoner's heart, and which will ever be the cheapest and the best reward for exemplary conduct.' The opinion here expressed derives additional weight from its being in conformity with that of Colonel Jebb, Captain Crofton, and Captain Whitty, Directors of the Convict Prisons; appointments of high importance, offering a wide scope for observation on the habits, manners, and ways of thinking, common to the criminal class.

These views, Gentlemen, prevailed, and the principle of the Bill was changed. But by this time the Session was rapidly drawing to an end; and the requisite alteration in the clauses to bring them into harmony with the principle of encouragement, now become the characteristic of the proposed law, was but partially made. Probably it will be obvious to you, as it certainly was to the Committee, that when a power was given to the prisoner himself to shorten his term of confinement, the ground for reducing the length of his original sentence was gone; nay, that inasmuch as the period of probation after discharge ought to be protracted until it becomes manifest that the training of the prison has secured, as completely as it can be secured, the permanent well-doing of the liberated prisoner, so far from shortening sentences, reason would rather seem to dictate the propriety of making them longer than ever. The Committee, then, by recommending that convicts sentenced to penal servitude should be brought, in practice, within that privilege of tickets-of-leave to which they are so clearly entitled by law, and by further recommending that the present inadequate terms of penal servitude should be lengthened, have done what in them lies towards repairing the errors both of the statute itself and of its administration. But their advice goes further. They desire that new terms of penal servitude should be created suitable to a class of slighter offences than those now visited with that punishment, in order to give to minor offenders the benefits of the ticket-of-leave. Let us hope, Gentlemen, that the progress of opinion will not be permanently stayed even at this point. Let us hope that no inmate of a prison will be left without incentives to do right. If the imprisonment to which he is adjudged is so short as not to admit of his being made the better by reformatory treatment, may not such a consequence furnish a more cogent reason for lengthening the period of his detention, than for depriving him of the moral advantages conceded to those who are worse than himself?

The remaining resolutions of the Committee, to which I would crave your attention, are as follows:—

‘ 13. That there has been much of misapprehension and exaggeration with regard to the conduct of persons released upon tickets-of-leave who have been frequently confounded (even by several of the witnesses on this inquiry) under one common designation of ‘ticket-of-leave men,’ with convicts whose sentences had fully and absolutely expired.

‘ 14. That there is reason to believe that the conduct of a large portion of the whole number of persons discharged upon tickets-of-leave has hitherto been good, and in other cases persons so discharged have relapsed into crime from the difficulty, arising from their former characters becoming known, of procuring or retaining honest employment in this country,—a difficulty, however, which obviously applies to all persons once convicted, whether discharged upon tickets-of-leave, or absolutely at the expiration of their sentences.

‘ 15. That to render this system of tickets-of-leave adapted both for the reformation of offenders and the interests of the public, the conditions endorsed upon the tickets-of-leave ought to be enforced more strictly than appears to have been hitherto the case.

‘ 16. That every convict, on his release with a ticket-of-leave, ought to be reported to the police of the town or district to which he is sent.’

Gentlemen, it was to that confusion between convicts discharged on tickets-of-leave, the period of whose sentences had not terminated, and convicts who had been freed absolutely, or, if liberated with tickets-of-leave, had been out of prison so long that their sentences had expired—it was the confounding, I say, of these three descriptions of convicts, and considering them all as ticket-of-leave men, which produced what I may fairly call the panic of the last winter; throwing the good people of England into a state of mind which placed in extreme danger the permanency of a measure, having most assuredly the soundest foundation—whatever defects might weaken its superstructure. Happily, the misapprehensions and the fears to which the Committee advert have been dispelled. Our advance towards the rational treatment of criminals has been secured; and a peril has been averted, the magnitude of which we can scarcely overestimate. Nevertheless it cannot be denied, that the public

had very reasonable grounds for complaint and misgiving. The responsibility of the convict discharged on ticket-of-leave, has been in practice little more than nominal. The rule was to send him to the town or district in which his offence had been committed; but no intimation of his return was conveyed to the police, and consequently they had no means of ascertaining whether he had come out of prison on a ticket-of-leave, or whether he had received an unconditional discharge. In the latter event he was subject to no control until he had committed a fresh offence. In the former, his ticket was liable to recall at the discretion of the Secretary of State, and by an endorsement on the ticket-of-leave itself he was informed that 'the power of revoking or altering the licence of a convict will most certainly be exercised in case of his misconduct. If, therefore, he wishes to retain the privilege, which, by his good behaviour under penal discipline, he has obtained, he must prove by his subsequent conduct that he is really worthy of her Majesty's clemency.'

Thus it appears that due notice is given to every ticket-of-leave man, that any clear manifestation that he does not mean to follow a sober, honest, and industrious course of life, will consign him again to prison; such manifestation being taken as proof that when he left the gaol he was not in a fit state to be discharged.

This omission of notice to the police, it is recommended by the Committee, as you will have observed, should henceforth be supplied; and doubtless much will be done by acting on their advice. Yet much will still remain to be accomplished. Since the establishment of railways, individuals of the predatory class have gained a very great and pernicious facility for extending the circle of their depredations, by moving quickly from place to place. This renders it necessary to devise some means by which the police may be able to recognise and identify convicts, whatever towns they may choose to visit. Practical difficulties will no doubt arise in framing such a plan. But I speak from good authority when I say that they may be overcome. I should encroach most unreasonably upon your time if I were to enter into details on this part of the subject. Its importance, however, cannot be denied; since, without the means of identifying ticket-of-leave men, it is obviously impossible to hold any control over them, or to ascertain what proportion

relapse again into crime. Let me present to you, as an example of how difficult it is now to ascertain who are and who are not at large under tickets-of-leave, the state of things in this town. At the beginning of the present year, judging from *data* which I laid before the Committee in my evidence, and which have never been impugned, there must have been, as I calculated, eighty ticket-of-leave men, at the least, resident in Birmingham. I asked your Chief Superintendent for a list of all that could be found. He and his subordinate officers exerted themselves to comply with my request. After six weeks of inquiry and observation; they presented me with the names of nineteen persons only, stating that there were many others whom they suspected to belong to this class, but of whom they had no specific knowledge. Of the nineteen, further information disclosed an error as to five. These had never held tickets-of-leave, but had left their prisons upon unconditional discharges. I subsequently found that the police of Bristol were in a like state of doubt, with regard to the criminal population of that city. Hence it follows that relapsed ticket-of-leave men, as well as other convicts, often succeed in imposing themselves on Courts as appearing at the bar for the first time; and thus it becomes impossible to distinguish, with any degree of accuracy, between the numbers of those on whom training has been effectual, and those on whom it has failed. But although I am compelled to withhold my confidence from all the estimates which have appeared as to the relative proportions of those ticket-of-leave men who stand fast, as compared with those who again relapse into criminal courses, nevertheless I rejoice to be able to add, as I do from a variety of facts which have come to my knowledge, that I believe the committee was fully justified in stating that the conduct of a large number of this class has been good. I believe, too, that the fall of many of those who have relapsed, is rightly attributed to the reluctance which employers feel to engage the services of these unhappy persons. That reluctance, however, it may be fairly hoped will be greatly diminished, when the master has a reasonable assurance that the reformation of the convict, which has gained for him his ticket-of-leave, is genuine and permanent. But before such a result can be conscientiously predicated of the class, however it may be true as regards individuals, much improvement will be required in our system of training prisoners.

I have spoken, Gentlemen, of the necessity for passing the criminal, or rather for enabling him to pass himself, through progressive stages of imprisonment. The soundness of this principle, indeed, is recognised, and, to a certain limited extent, is now in action; and so far as the gaol authorities have brought it into use, it is highly beneficial. But the stages are not sufficiently numerous; and, what is a much greater defect, the convict does not win his way through them by dint of exertion. The right to pass onwards is gained by his remaining in each a given time; such period, it is true, may be lengthened by signal misconduct on his part, but that is little to the purpose. Gentlemen, what I desire to see is that the convict should never be able to pass through a stage, merely by conformity to rules for a certain number of months, weeks, or days; but that he should be held to proof that he has made a substantial advance towards reformation. Apply the proper test to his conduct, and then let him pass as quickly as he can. Give him plenty of work, and reward him according to the measure of his labour. Let him have the right to lay out some portion of his earnings in bettering his diet; but give him a strong motive to use this right sparingly, by making his economy tell upon his progress towards freedom. Finally, let his faults, whether of omission or commission, retard his advancement; and, when of sufficient magnitude, let them thrust him back into a stage already passed.

It is easy, Gentlemen, to raise theoretic objections against this proposal. All I shall say is, that the obstacles against success, be they few or many, have been grappled with, and overcome; not in one gaol or one country, but in prisons separated by hundreds and thousands of miles from each other; and by governors acting on plans which each had framed for himself, without being able to profit by the experience of his fellows. One fact, Gentlemen, even if it stood alone, would suffice to show that the theory of the law is, with us, most imperfectly reduced to practice. It is this. Discharge, on ticket-of-leave, as I have said, is given when the convict has endured a certain fraction of his punishment, as measured by time, unless in excepted cases of flagrant misconduct, when he is detained for a somewhat longer period. Now it was proved before the Committee, that the number of such excepted cases is very small, and that the extra detention is very short. But

I put it to your common sense, Gentlemen, whether such could be the operation of the measure, if the convicts did in truth *work* themselves out of prison. Is it not self-evident that convicts commencing their imprisonment together, would, on that supposition, no more depart on the same day from the prison gates, than that the horses starting together at a race, will all at the same moment reach the winning-post? Here there is a need for improvement which demands the anxious attention of all who have the fate of the criminal class under their control. For if it be manifestly unjust to the public to permit criminals, whose sentences have not expired, to return into society unreformed, I hold it to be no less mischievous to the criminals themselves. Surely, Gentlemen, liberty to him who will only use it to plunge himself deeper into guilt, is no blessing, but a curse; whether we regard his welfare here or hereafter. Gentlemen, I attribute the present very imperfect state of our prison discipline to no want of zeal and anxiety for good results in those to whom it is entrusted. I attribute it to their want of confidence in the possibility of thoroughly reforming a convict, by any treatment of which he is susceptible while confined in prison. 'The reason,' said the present Secretary of State for the Home Department, in the House of Commons, 'why a ticket-of-leave cannot fairly be regarded as a proof of reclamation, is obvious. So long as a man is immured in a prison, where he is denied the opportunity of getting drunk, and of associating with those who might lead him into temptation, he is evidently so circumstanced, that it is impossible for him to afford us the means of arriving at a satisfactory conclusion as to whether his repentance is genuine or affected.'

Gentlemen, the proposition thus enunciated by the Right Honourable Secretary is as undeniably true as it is clearly and forcibly expressed. Yet I am not prepared to accept the Minister's practical conclusion in favour of discharging unreformed criminals; because, with the information derived from the evidence taken by the Committee, of the excellent results which have followed a judicious relaxation in the restraints upon convicts during the latter stages of reformatory discipline, I cannot admit it to be a necessary condition of prison life, that the will of the convict should be kept in that state of slavish repression which is here assumed. Gentlemen, the question

which I am now examining underlies the whole theory of reformatory discipline. Even that amendment, imperfect as it is, which the stimulus afforded by the ticket-of-leave system has effected, is wrought out by a certain small measure of free action conceded to the prisoner. The punishment which is inflicted upon him for gross misconduct in gaol, shows that he is held to have had it in his power to choose between right and wrong; and it is merely a careful and well-graduated enforcement of this principle which is required to accomplish all at which we aim. Personal reformation, as the term implies, is the acquisition of some faculty of action or endurance, not possessed before. But every one of our acquirements is made by the repetition of efforts, the large majority of which are often unsuccessful. To learn to swim we cast ourselves on the water, and are apt scholars indeed if we are not obliged to repeat the process times out of number, before we can overcome our tendency to sink to the bottom. At last, however, we plunge and struggle ourselves into the capacity for keeping our heads above the surface. A story is told of a man who fondly hoped to acquire the art in comfort and safety, by placing himself on his dining-table, face downwards, and then vigorously striking out his arms and legs. But he discovered in the end, that swimming could only be learned by running the chance of sinking; and, Gentlemen, as certain as it is that a swimmer taught on dry land will straightway go to the bottom the moment he ventures into the water, so sure it also is that the prisoner who returns into the world before he is in some sort inured to its dangers and its combats, will yield to the first temptation. He may, it is true, and not infrequently does, rise again; renews the fight, and in the end is victorious. But how many, alas! become at once hopeless of their own capacity for resistance, and fall to rise no more.

Gentlemen, we naturally shrink from exposing a fellow-creature, who has shown his weakness by the fact of his becoming a convict, to any temptation while he remains under our protection and control. But this disposition, however laudable, must be overcome. We must reflect that it is not in our power, except by imprisoning him for life, to guard him against the host of temptations which will throng upon him, the moment he sets foot beyond the prison walls. Is it not, then, more than permissible—is it not our duty—to train him to bear the

shock of those temptations, while we are able? And at once to subject him to a renewed course of preparation, if upon experiment he is found incapable of encountering his danger in the mitigated form in which we can present it to him? But, Gentlemen, I need not detain you with speculations. By Montesinos, at Valencia; by Obermaier, at Munich; by the Governors of many prisons in the United States; and last, not least, by Captain Crofton, the Chairman of the Board of Directors of Convict Prisons in Ireland, has this difficulty, formidable as it is justly deemed, been met and surmounted. Gentlemen, it is the deep impression produced on my mind by reflecting on this difficulty, which has led me to appreciate so highly the value of that additional responsibility under which the prisoner is placed, when his discharge is revocable, in the event of his forfeiting the pledge which his good conduct had given, of his permanent reclamation. It is the opinion of some for whose knowledge and ability I entertain the highest respect, that a prisoner once dismissed should be restored, so far as the law can restore him, to the position of those who have never offended. And assuredly, if any infallible test could be discovered by which to try the genuineness and the sufficiency of the change wrought in the moral state of the prisoner who has passed through all the stages of prison discipline, to keep any further hold on such an individual would be useless; and therefore could not be justified. But having regard to the hopelessness of discovering such a test, and to the well-known fact that the early days of restored liberty are those when his temptations to take the wrong course are most difficult to resist, I cannot but agree most cordially with the Committee, in believing that the prisoner's discharge ought to be revocable; and I cannot but think that the term of his original sentence forms the shortest period at which he should be wholly relieved from the consequences of his offence.

Let me, Gentlemen, now relieve *you*, who, although you have not offended, have been long detained. But not before I ask you to accept my sincere congratulations on the different aspect which the reformatory question has now assumed, to that which it presented twelve months ago. The Committee has performed a great service, and has the first title to our thanks. Yet we must not undervalue the support to the principles which they have laid down, afforded by the Societies for instituting Refor-

matory Schools, which are springing up all around us. True it is, they confine their labours to the young; but the benefits which they confer on juvenile criminals can only be successfully defended when attacked, as attacked they often are, upon grounds which, for the most part, are common to all reformatory systems, whether for the young or for the old. Nor, Gentlemen, ought we to pass by the assistance which we may hope to derive from the Association, lately founded in Birmingham, for the Aid of Discharged Prisoners. It has already, even in its infant state, shown its ability to guide, protect, and succour the objects of its care, at their perilous entrance on their new course of life, when the offices of Christian philanthropy, at all times precious, are more than ever needful. Gentlemen, I know you will join with me in fervent wishes that its members may hold fast to this noble work of charity; and that they may obtain the only reward they seek, by finding its utility commensurate with their labours, and their benefactions.

'To M. D. Hill, Esq., Q.C., Recorder of Birmingham.'

'The Grand Jury, before being dismissed from their duties, desire to express to the Recorder their high sense of the importance of the subject brought under their notice in his Charge, and to express a hope that such enlightened views upon the treatment of the Criminal Classes may receive that consideration from the Legislature which they demand.

'Signed on behalf, and at the request of the Grand Jury,

'J. P. SALT, Foreman.'

'October 21, 1856.'

SEQUEL.

PRISONS OF MUNICH AND VALENCIA.

'Letter from M. D. Hill, to the Right Honourable M. T. Baines, M.P., Chairman of the Transportation Committee, House of Commons, 1856 :*—

* Transportation Committee, House of Commons, 1856. Second Report, App., p. 160.

‘Heath House, Stapleton, Bristol, 20th June, 1856.

‘SIR,—A few days ago I received from Spain a communication which I desire to lay before the Committee. It consists of answers furnished by Colonel Don Manuel Montesinos, late Governor of the Prison of Valencia, to questions similar to those which I transmitted to Munich for the purpose of obtaining information regarding the present condition of the State Prison in that city; which questions, with their answers, as translated by Mr. Leipner, of Clifton, you have already decided to print in your Appendix. The contribution from Valencia, which I have obtained through the kindness of the eminent house of Christobal de Murrietta and Co., will, I think, be found equally important with that from Munich. But the value of each will so obviously depend on the confidence which the Committee may be induced to place on the facts to be found in these communications, that I venture to hope you will allow me to lay before you, as briefly as I can, such corroboration of the statements to be found in each paper, as I have been able to meet with.

‘The attention of the English public was first called to the system of discipline practised in the State Prison of Munich by Mr. Alexander Baillie Cochrane, formerly a member of your House of Parliament, in a pamphlet published in the year 1853, the title of which will be found below.*

‘‘While I was residing last year at Munich, my attention was particularly invited to the system of prison discipline practised in the State Prison, under the intelligent superintendence of M. Obermaier—a system, as explained to me, so opposed to all my preconceived notions, and apparently founded on such Utopian ideas of the perfectibility of human nature, that it required the most minute investigation to satisfy me of the accuracy of my informants.

‘‘Some twenty years have elapsed since M. Obermaier first denounced the prison system which prevailed in Germany. Unlike many reformers of the age, he did not rest contented with pointing out existing evils, but he lost no time in urging

* *Prison Discipline.* By C. M. Obermaier, Governor of the Munich State Prison. Translated by M. Rehmann, with a Prefatory Notice by Alexander Baillie Cochrane. London: James Ridgway, 169, Piccadilly, 1853. (Out of print.)

upon the attention of the Government all those reforms which have since been carried out in different districts, and for the full development of which the State Prison of Munich afforded the widest scope ; it is not surprising if, in the first instance, his suggestions were received as the aberrations of an amiable visionary, for he started a theory which many years since was received, even in this country, with doubt and mistrust—namely, that the worst of criminals will commonly be found possessed of some one good quality, and that a system of prison discipline, based rather on pity than harshness, and appealing to the nobler and not the brutal instincts of human nature, would tend to raise men's self-respect, and thus gradually work upon their moral qualities ; that it was at once a wiser and a more humane policy to sympathize with the force of the temptation to which the criminal had yielded, than to visit with undue severity its guilty consequences.

“ By slow degrees, and through that earnestness and sincerity which cannot fail ultimately to win conviction, M. Obermaier gained adherents to his opinions, and opportunities for testing their value ; after some years' experience at the prison of Kaiserslautern, where a system unusually harsh was replaced by one based on commiseration and pity, M. Obermaier was appointed governor of the Munich State Prison, which situation he now holds.

“ When M. Obermaier first arrived at Munich, he found from 600 to 700 prisoners in the gaol, in the worst state of insubordination, and whose excesses, he was told, defied the harshest and most stringent discipline ; the prisoners were all chained together, and attached to each chain was an iron weight, which the strongest found difficulty in dragging along ; the guard consisted of about 100 soldiers, who did duty not only at the gates and around the walls, but also in the passages, and even in the workshops and dormitories ; and, strangest of all protections against the possibility of an outbreak or individual evasion, twenty to thirty large savage dogs, of the bloodhound breed, were let loose at night in the passages and courts, to keep their watch and ward. According to his account, the place was a perfect Pandemonium, comprising within the limits of a few acres the worst passions, the most slavish vices, and the most heartless tyranny.

“ It was his work to purify this den of corruption, and he set gallantly to it. His first object, he told me, was to enlist the sympathies, and to win the confidence of some of the best of the men; afterwards to bring those men together, and subsequently, so far as they were concerned, to relax the severity of the prison rules. These men in their turn exercised a very gradual, but a very marked influence over others, until they formed a body willing to co-operate with him in his schemes of improvement. As the characters of these men became improved, their cheerfulness seemed to increase; as he lightened the weight of the chains on their limbs, so did the weight on their hearts appear to be removed. M. Obermaier admitted that the process was a long and painful one; but that the result is most satisfactory must be admitted by all those who have taken the trouble of visiting this remarkable establishment.

“ Although all I had been told led me to anticipate a great relaxation of ordinary prison precautions, I certainly scarcely expected to see the prison gates wide open, without any sentinel at the door, and a guard of only twenty men idling away their time in a guard-room off the entrance hall; from this hall two long corridors led right and left to the various offices and workshops; the apartments of the governor were on the first floor, and immediately adjoining them, and in the same passage, were the dormitories and workshops. These workshops were of various dimensions, capable of holding from twenty to sixty men; none of the doors were provided with bolts and bars, the only security was an ordinary lock, and, as in most of the rooms the key was not turned, there was no obstacle to the men walking into the passage, and I have already observed that there were only twenty soldiers to prevent them stepping from the passages into the road. Over each workshop some of the prisoners with the best characters were appointed overseers, and M. Obermaier assured me, that if a prisoner ever transgressed a regulation, his companions generally told him, ‘*Es ist verboten*,’ (it is forbidden,) and it rarely happened that he did not yield to the opinion of his fellow-prisoners. Few of the men wore chains, and the chains, when worn, were so light that they produced no practical inconvenience. M. Obermaier explained that he objected even to this remnant of the old system, but

that the authorities insisted on certain forms of restraint being maintained.

“ Within the prison walls every description of work is carried on; the prisoners, divided into different gangs, and supplied with instruments and tools, make their own clothes, repair their own prison walls, and forge their own chains, producing various specimens of manufacture which are turned to most excellent account; the result being, that each prisoner, by occupation and industry, maintains himself; the surplus of his earnings being given to him on his emancipation, avoids his being parted with in a state of destitution,—a very necessary and important consideration, as, from having something to fall back upon, he may be prevented resorting to those pernicious habits and propensities which had brought him within the sphere of the criminal code.

“ The articles manufactured by the prisoners are all exported, that the sale of such produce might not injure, or in any way interfere with the home manufactures. The return enables the Government to uphold the institution at a comparatively trifling expense.* On entering each room, it was impossible not to have remarked the deportment of the prisoners towards the governor; for the kind and friendly manner in which he addressed them was responded to by a civility of manner rarely, under any circumstances, exhibited by men of that class, and still more rarely by such men when placed in that position. Neither in the passages, within the prison walls, nor in the courts without, was any guard to be seen; the governor walked about with a walking-stick, and his sole escort was a pet dog of enormous size, of the Pomeranian breed; altogether the effect produced upon myself, and those who accompanied me on this visit, was one of great astonishment, while, even after being an eye-witness of the system pursued, and listening to M. Obermaier's explanation, it was very difficult to uproot all our previously-formed opinions, or, as M. Obermaier might have termed them, prejudices.

“ One of the party was disposed to explain this social phenomenon by the phlegmatic habits of the Germans, whom it is

The answers of the Bavarian Minister of the Interior do not support this statement.—*M. D. H.*

difficult to stimulate to active exertion if their daily wants are duly attended to ; this explanation might suffice, if this system had been universally and originally adopted throughout Germany, by those who were most competent to appreciate the national character ; but it fails to satisfy us, when it is remembered that the discipline which M. Obermaier found carried on in the Munich Prison, and which still prevails in Germany, was so severe that it proved very little confidence on the part of the Government in the apathy and sluggish indifference of those subjected to it. Another suggested that the prisoners were supplied with greater comforts than under the old system, in fact, that the life was so agreeable, they might have no desire to exchange it for another ; but M. Obermaier pointed out that the changes he had made were only in those details which tended to develop the moral qualities, that the diet, the working hours remained the same ; and he added, with force and justice, that the very men whom the lightening the weights of the chains, and the removal of bolts and bars, could affect in so remarkable a manner, were precisely those to whom the loss of liberty would appear most appalling. Besides, freedom is, after all, the first affection of the human mind, and no amount of comfort could compensate for a life of monotony and imprisonment. Then it was remarked, that even a guard of twenty men, with loaded arms, is a sufficient protection, and that, though the men were to escape, it would not be possible for them long to avoid re-capture. This may be true, but, at the same time, so great a number of men, with working tools in their hands, would be a formidable body to resist. But the question this idea suggests is, is the protection such as a governor, placed in so responsible a situation, could feel justified in trusting to, if he only relied on such physical aid for the security of the prison ?

“ The whole matter is to me a problem which, even after visiting the prison and reading M. Obermaier’s explanation, I find it difficult to understand ; whenever I have mentioned the subject I have found the idea of treating such men with confidence, and the hope of ever humanizing a set of ruffians, scouted as impracticable and Utopian. Still, so many grave considerations are involved in this question of prison discipline, and it being universally recognised of such permanent impor-

tance, I have thought a translation of the most important parts of the Obermaier pamphlet may not be without interest; I have, therefore, taken the liberty of prefacing these extracts by these few remarks. I have not published M. Obermaier's work *in extenso*, because it is very long, and much of it is irrelevant to the subject, consisting in the greater part of a description of Pentonville Prison, and in remarks on the system of solitary imprisonment.'

Then follows a *précis* of Governor Obermaier's work,* which brings the history of the prison to the year 1846. The results of his plans he states thus:—

“I undertook the direction of the prison of Kaiserslautern in 1830, and my task was fulfilled in the year 1836.

“In 1842 I was appointed governor of the Munich Prison, and in 1845 the whole scheme was in full operation, such as it may be seen at the present time.

“I discharged from Kaiserslautern, between the years 1830 and 1836, 132 criminals, who had been sentenced for different crimes, for periods from five to twenty years; of these 132, 123 have since their discharge been admirably conducted, and nine, that is, seven men and two women, have been recommitted. This statement is founded on the testimony of the authorities in the different places to which the men returned, and it is a well-attested fact; this proportion between the reformed and the relapsed remained nearly the same until 1842.

“The results of my management were equally successful in the prison of Munich. Although it was carried out within the walls of an old convent, ill adapted for the purposes of a prison, I was the more confirmed in my impressions at finding that a similar treatment carried out in two different German provinces was attended with equally satisfactory results; the official returns give the following results of the Munich treatment:—

“There were discharged between the years 1843 and 1845, 298 prisoners sentenced for various periods of from one to twenty years.

“Of these, 246 have been restored improved to society.

* Die Verhandlungen über Gefängnisreform in Frankfurt am Main im September, 1846 oder Die Einzelhaft mit ihren Folgen von G. M. Obermaier k. b. Regierungsrath und Vorstand der Strafarbeits-Anstalt in München. München, 1848, Joh. Palm's Hofbuchhandlung.

Those whose characters are doubtful, but have not been remanded for any criminal act, twenty-six. Again, under examination, four. Punished by the police, six. Remanded, eight. Died, eight.

“Now this statement is based on irrefutable evidence; it cannot be contradicted. It must either be that the great majority of the prisoners who quit the prison of Munich do so improved, or that those who are discharged, when they are set at liberty, improve themselves. I may add, that of the 246 who were discharged, 189 had been sentenced for murder, homicide, highway robbery, or theft.’

‘A very interesting narrative of a visit to the Munich State Prison, the date of which is not mentioned, will be found in the *Zoist** for January last. The author is the Rev. Chauncy Hare Townshend, A.M. This gentleman speaks in terms of high commendation of all he witnessed during what appears to have been a minute examination of the prison, and, although he does not seem to be acquainted with Mr. Baillie Cochrane’s pamphlet, he confirms all the statements of that gentleman. I can only venture upon a short extract.

“We now proceeded to various other apartments, in one of which the prisoners were making shoes; in another, plaiting list slippers; in another, turning boxes, candlesticks, napkin rings, &c. I was told that in choosing the occupation for the man, regard was had to his comparative health and strength, as well as to his particular turn for the handicraft, and also to his conduct; thus to be drafted on to the lighter and more amusing work was considered to be a reward. Every one was anxious to be a baker, and no wonder, for I never saw a more animated scene than the bakehouse presented. In this portion of the reformatory Erebus there was bustling and laughter and joking going on. My attendant told me that none but the better sort of criminals, who had either been condemned for only small offences, or who had worked their way up to confidence by long good conduct, were allowed to form part of the baking establishment. So it was with the cooking department, over which, besides, presided servants belonging to the institution itself. Of course, I must taste a loaf, and some soup. That is *de*

* *The Zoist*. Arthur Hall, Virtue & Co. 25, Paternoster-row.

rigueur in such cases. Both were excellent. I wish that all the Oliver Twists in the world might have as good in their work-houses! 'Was meat allowed every day?'

'No, three times a week.'

'One of the most interesting sights was the prisoners' library, by no means an uncheerful room either. Being in the centre nearly, and looking into a court, it had not the obligatory bars and wooden vents or boxes (like hencoops turned topsy-turvy), that made you feel you were in a prison, when you were in the apartments looking upon the street. So knowledge was made attractive every way. A few mild-looking prisoners, chiefly invalids I was told, were reading in this book-room as intently and silently as the studious in the British Museum. I looked at some of the books. They consisted chiefly of popularly instructive works. Sketches of astronomy or geography, history, travels, and the like. Not one mystically religious book did I see amidst the well-chosen collection. A few straightforward moral treatises or tales, inculcating love to God and man, that was all; and this in a Catholic country too! But Bavaria has many Protestant subjects, and, at the time I speak of, had a Protestant queen.

'The cloth manufactory, in itself a vast establishment, had very little of the prison in its appearance. The better class of criminals only were admitted here. Tidy-looking men they were; in full activity; running bustling about, carding, weaving, dyeing, till the cloth came forth, all of that whinstone blue, which is familiar to so many eyes that have gazed upon the Bavarian soldiery. No hive of bees could be in fuller hum and ferment than was this part of the prison. This was one of the last sights of the establishment; but I must not forget to say that I had previously been shown the man of the double murder; the twenty years' prisoner, who still had to end his life in captivity. He was in a large room where (I think) they were cleaning flax, or following some such quiet occupation, and he was one of the monitors (I was told) of the apartment. Of course I looked at him with interest. He had by no means an ill-formed head or countenance. He looked mild and pale; yet one could see, in looking at his face, that the passions had walked over that exhausted land. They had passed; there was no fear of their return. One saw also *that*.

“ Generally, I must observe, I was struck by the evidently bettered physiognomies of the criminals who had been longest in the prison. Two or three in fetters (for I saw some such) had, methought, hang-dog faces (perhaps the fetters partly made me think so), and some of the men in the working rooms had that shuffling, uneasy look which indicates the criminal; but in the majority of cases, I could see in its various stages the retrieval of the degraded physiognomy. The prisoners, many of them, decidedly had begun to look honest men in the face, and to abjure themselves the character of wild beasts in a cage.

* * * * *

“ About what I saw in the Munich prison I have little more to tell. The dormitories, not too large nor containing too many occupants, presided over by servants of the prison as well as by monitors from amongst the prisoners themselves; the neat light iron bedsteads that could be turned up against the wall; the clean beds made every morning by their occupants; the well-ventilated infirmary (which had as little smell of burnt blankets and prisoner as possible), all was excellent and in good order.’

‘ The attention of English readers was called to the treatment of criminals at the prison of Valencia, by Mr. Hoskins, in his work, entitled, *Spain as it Is*, published in the year 1851.* The statements of Mr. Hoskins attracted the attention of Captain Maconochie, who, in the year 1852, published a pamphlet,† in which may be found all the information contained in Mr. Hoskins’ book, together with copious extracts from a little work by Colonel Montesinos himself.

“ In a work recently published (*Spain as it Is*, by G. A. Hoskins, Esq., i., pp. 104-10), an interesting account is given of the public prison at Valencia, in which the average number of prisoners is about 1000, but 1500 have been at one time received into it. They chiefly belong to the neighbouring districts of Albacete and Valencia. The accommodation provided in the prison is very imperfect, and there is little classi-

* *Spain as it Is*. G. A. Hoskins. Colburn and Co. 1851.

† Account of the Public Prison of Valencia, calculated to receive 1500 prisoners, averaging 1000; yet in which during the last three years there has not been even one recommittal, and for the previous ten years the average was only one per cent. With Observations, by Captain Maconochie, R.N., K.H. London: Charles Gilpin [now Cash], 5, Bishopsgate-street Without, 1852.

fication observed, the boys not being even separated from the men. In 1835, accordingly, when the present governor, Colonel Don Manuel Montesinos, was appointed to it, the average of recommitments was from thirty to thirty-five per cent. per annum; nearly the same that is found in England and other countries in Europe; but such has been the success of his method, that, for the last three years, there has not been even one recommitment to it, and for the ten previous years they did not, on an average, exceed one per cent.* The following, with a few unimportant omissions, is Mr. Hoskins' printed statement concerning what he himself saw of it, the additional details here annexed having been obtained from his personal testimony, and a pamphlet now in my possession, published by Colonel Montesinos, in 1846. The plan, at first, was much disliked in the city of Valencia, on account of its lenity, but is now universally approved of; crime is said to have diminished in the district since it was matured; and its author has been since appointed, and now is, Visitor-General of Spanish Prisons (*Visitador-General de los Presidios del Reino*).

“If the vices and passions of a southern people prevail in a place where, until the last few years, a strong government has not been enjoyed, it is greatly to the credit of the city of Valencia that it can boast of one of the best conducted prisons in Europe. This being one of the great social questions of the day, I made particular inquiries about it. There are a thousand prisoners, and, in the whole establishment, I did not see above three or four guardians to keep them in order. They say there are only a dozen old soldiers, and not a bar or bolt that might not easily be broken; apparently not more fastenings than in any private house.

“The governor, a colonel in the army, has established military discipline, and the prisoners are divided into companies. The officers stand as stiff when you pass, as soldiers presenting arms. The sergeants and inferior officers are all convicts, who,

* By reference to the communication which I have received from Colonel Montesinos, it will be seen that he now gives the proportion of recommitments at two per cent. All statistics are open to fallacies, but those of prisons are obnoxious to error from a great variety of sources. Without the slightest disrespect to Colonel M., I must be permitted to accept this very high rate of reformation with considerable reserve.—*M. D. H.*

of course, are acquainted with the temper and disposition of their companions, and best able to manage them; and the prospect of advancement to higher grades is an inducement to all to behave well. When a convict enters, he is asked what trade or employment he will work at or learn, and above forty are open to him, so that he has the means of devoting his time to any he knows, or, if ignorant of all, to one he feels an inclination for, or which he is aware will be useful to him when he is liberated. Many a man may wish to return to his native village with what he has earned here, and he knows best what trade or employment will there not only be of advantage, but even a fortune to him. If he declines to work at any, he is sent to the public works, or employed in carrying wood; but the out-door convicts are by far the worst conducted in the establishment, and are therefore kept distinct from the others, who, by their selecting a trade, have shown a disposition to be industrious and improve themselves.

“ When first the convict enters the establishment he wears chains, but on his application to the commander they are taken off, unless he has not conducted himself well. Among some hundreds I only saw three or four with irons on their legs. There seemed to be the most perfect discipline. They work in rows; rose in rank as we passed, and seemed obedient to a word. They are not allowed to talk to each other during their work, but this rule does not seem to be very strictly enforced, and they may speak to their instructor, who is often one of themselves, and ask each other for tools or anything requisite for their work, and every night after prayers they are allowed to converse with each other for an hour. There are weavers and spinners of every description, manufacturing all qualities, from the coarsest linen cloths to the most beautiful damasks, rich silks and velvets—one a crimson, apparently equal to the Utrecht velvet. There were blacksmiths, shoemakers, basket-makers, rope-makers, joiners, cabinet-makers, making handsome mahogany drawers; and they had also a printing machine hard at work.

‘ The labour of every description for the repair, rebuilding, and cleaning the establishment is supplied by the convicts. They were all most respectful in their demeanour, and certainly I never saw such a good-looking set of prisoners; useful occupa-

tion (and other considerate treatment) having apparently improved their countenances. The greatest cleanliness prevailed in every part of the establishment; the dormitories were well ventilated, the beds neatly packed up, and water, the great requisite in a sultry climate, within reach of all. On the walls, in large letters, were inscriptions in rhyme, directed to inculcate good maxims. There was a neat chapel for their devotions, and a garden for exercise, planted with orange trees. There was also a poultry-yard for their amusement, with pheasants and various other kinds of birds; washing-houses, where they wash their clothes, and a shop where they can purchase, if they wish, tobacco, and other little comforts, out of one-fourth of the profits of their labour, which is given to them. Another fourth they are entitled to when they leave; the other half goes to the establishment, and often this is sufficient for all expenses without any assistance from the Government.

“The governor found it was impossible to induce the prisoners to work heartily without giving them an interest in their gains; but when once he had by this encouragement established industrious habits, it was more easy to correct their principles. Honour among thieves is really found here, the prisoners keeping the accounts, and no attempts made to deceive.”

‘In a pamphlet* published by Mr. Hoskins in 1853, he relates the following anecdote:—

“A visitor expressing his doubts as to such feelings of honour existing among convicts, the governor asked the worst class in the prison—men sentenced to ten years—to select a messenger, and he gave him an *onza* to change in the city, which is such a labyrinth of narrow streets, escape was most easy. Great was his astonishment when the man returned with 3*l.* 6*s.* in small money.’†

“It is doubtless the same feeling of honour which prevents their rebelling and leaving the asylum whenever they feel dis-

* *What shall we do with our Criminals? with an Account of the Prison of Valencia and the Penitentiary of Mettray.* By G. A. Hoskins, Esq. London: Ridgway, 1853. p. 10.

† It will perhaps be remembered that Mr. Henry Mayhew, having assembled a meeting of juvenile criminals, tried a similar experiment with equal success.—Vide *London Labour and the London Poor*.—M. D. H.

posed.* It is surprising that the establishment requires so little assistance from the Government, as the expense of the officers and instructors is very considerable, and the governor has invariably made the teaching and moral improvement of the convicts his chief consideration, without any regard to the profits to be derived from them.

“All were cleanly dressed in woollen clothes of the same colour, which is requisite in case of any attempt to escape. In summer they have lighter clothes. Their food is excellent, and consists of large brown loaves, about the colour of our best London brown bread, but finer in quality, and quite as good; rations of olla, rice, potatoes, and meat on fête days, which in Spain are numerous. Instruction is open to all in a large school, which the boys under twenty are obliged to attend for one hour daily, and any prisoner above that age who wishes may join the classes. I saw numerous instances of excellent writing (in the Spanish style) by lads and adults who could not write a line when they entered; and many have qualified themselves for clerks' places, which they have obtained on leaving the prison. There is a good hospital, with a dispensary, all as clean and comfortable as could be desired, but the average number in the hospitals never, they say, exceeds two per cent. This system may be thought too indulgent; but what is the result? During the last three years not one prisoner has been returned to it. In the ten previous years the average was not more than one per cent., though before that period the number of recommitments was 30 to 35 per cent. From January, 1837, to 1846, the first nine years of the establishment, when the shops were not all open, and the institution in many respects was incomplete, 3127 convicts confined there were liberated, and of these 2355 had learnt some trade or received instruction, so that only 792 were without instruction, from their age or disinclination to receive any.

* Under good treatment the vast majority of convicts might be retained in prisons of inexpensive construction. Doubtless there is a small class who require strong walls, bolts, bars, and watchful guardians, but every individual of this class is well known to the police and to prison officers. Consequently there would be no difficulty in selecting them, and transferring them to some one gaol so constructed and guarded as that escape should be impossible. The first stage of their probation would be to work themselves out of this very strict confinement, and entitle themselves to return to ordinary prisons.—*M. D. H.*

“It may be said that the stabbings, which are frequent in Valencia, would not be so common if severer punishments were inflicted; but they say that the use of the knife was much more frequent before this system was established. The great principle here is to afford an inducement to the criminals to work, to teach industrious habits, to inculcate honourable and virtuous principles, and to send them into the world better men, educated, and able to work at some trade, and with money in their pockets to start with, instead of being obliged to have recourse to their old habits for subsistence. * * * *

“The success attending the reformation of the prisoners in this establishment is really a miracle, and England ought to make an attempt to do the same.’

* * * *

‘On several of these points,’ says Captain Maconochie, ‘Colonel Montesinos’ words in his pamphlet are striking:—

“According to the views to which I was thus led, and never forgetting that the double object of punishment is to reform those subjected to it, and to give a salutary warning to others, I sought by every means, and at any cost, to extirpate in my prisoners the lamentable germ of idleness, and to inspire them instead with a love of labour, seeking to impress this beneficial sentiment ever more and more in their hearts. But as unproductive work in the prison could by no means effect this, I made it a rule, whenever any one showed a disposition to labour, but had no occupation which could contribute after his discharge to maintain him honestly, to endeavour to procure him such, and for this purpose I sought to bring within the prison as many different workshops as possible, allowing him to choose among them which was likely to be most advantageous to him; and now there are above 40 of these all in full operation, and all originally organized and still maintained by the knowledge and capacity of the prisoners themselves. Neither for their introduction, nor for the rebuilding or repair of the prison, have I ever asked the Government for a single farthing (*un solo maravedi*), nor called in the assistance of any mechanics from without. It is true that the progress of many of these workshops has been thus very slow and troublesome; for, not having had funds at my disposal for the first purchase even of the necessary tools and machines for them, I have been compelled to proceed only

step by step in them. But on the one hand, I could not help the want of money; and on the other, I have always thought a frequent and intimate correspondence between the prisoners and persons of a different description outside objectionable, and I have thus had no choice.

“The establishment of one workshop, and the difficulties experienced in managing it, showed me both how to introduce more and to enlarge those already in operation, and I thus further gradually acquired the intimate conviction that, without the stimulus of some personal advantage accruing to themselves from their labour, it is difficult to obtain work even from the already skilled, and almost impossible to get the unskilled to learn. Repeated experiments convinced me of the practical lesson involved in this maxim of social economy, and that what neither severity of punishments, nor constancy in inflicting them, could exact, the slightest personal interest will readily obtain. In different ways, therefore, during my command, I have applied this powerful stimulant, and the excellent results it has always yielded, and the powerful germs of reform which are constantly developed under its influence (*desarrollanse a su impulso*), have at length fully convinced me that the most inefficacious of all methods in a prison—the most pernicious and fatal to every chance of reform, are punishments carried the length of harshness. The maxim should be constant, and of universal application in such places, not to degrade further those who come to them already degraded by their crimes. Self-respect is one of the most powerful sentiments of the human mind, for this reason, that it is the most personal (*el mas egoista*); and he who will not condescend, in some degree, according to circumstances, to flatter it, will never attain his object by any series of chastisements (*ningun linage de castigos*), the effect of ill-treatment being to irritate rather than correct, and thus turn from reform instead of attracting to it.

“Moreover, the love of labour cannot be communicated by violent means (*vejámenes*), but rather by persuasion and encouragement; and although it is quite possible to obtain a specific amount of work from prisoners by the aid of the stick (as is sometimes recommended by high functionaries in this department), yet the consequence is necessarily aversion for an employment which involves so many penalties, and of which such a bitter recollection must always be preserved. And the moral

object of penal establishments is thus also, in fact, defeated—which should be not so much to inflict pain as to correct ; to receive men idle and ill-intentioned, and return them to society, if possible, honest and industrious citizens.

“ It was not till after making many experiments of severity that I came firmly to this conclusion ; but ultimately I made it the base of all my operations on the minds of my prisoners, and the extraordinarily small number of recommitments to my prison, and the excellent health and perfect state of submission in which those confined in it have always been kept, seem to me to leave no doubt of its soundness.*

‘ Mr. Hoskins was not the first, however, to call the attention of our countrymen to the prison at Valencia. It was visited by Mr. S. T. Wallis, an American traveller, in the year 1849, whose book was published in London in 1850.† I insert his description :—

“ Near the Puerta San Vicente, after a long walk and tedious search, we found an institution of which we had heard a good deal from our Spanish fellow-travellers. It was the *Presidio*, or Penitentiary. It is a large and well-distributed edifice, once a convent of Augustine monks, and its complete, extensive, and admirable arrangement would do no discredit to any nation. I confess that I had no expectation of seeing any such thing in Spain. The Guide-book (Murray’s) omits it altogether, though there is certainly nothing half so interesting, as indicative of national progress, within the limits of Valencia.

“ The Augustine Convent was applied to its present uses in 1838. It now contains about 900 prisoners ; and we were told that about 400, confined for minor violations of the law, had been released on the occasion of the Queen’s marriage. They are distributed in different chambers, and dedicated to various branches of industry. Nearly all the trades are represented. Their fabrics of coarse cotton are admirable, and they work successfully in silks, velvets, and fine cutlery. There is a printing-press, at which work is done, by contract, for publishers in the city. We went through it, and found the devils numerous and busy. Hard by was the bindery, which seemed to be in

* Account of the Public Prison at Valencia. By Captain Maconochie. p. 13.

† *Glimpses of Spain ; or, Notes of an Unfinished Tour.* By S. T. Wallis. London : Sampson Low, 1850. p. 57.

considerable demand. The infirmary was in capital order, clean, airy, and well-distributed; the apothecary's shop and laboratory as nice and complete as could be desired. The dormitories were clean to a degree; each man's mat, mattress, and bed-clothing hanging over the spot on which he was to spread them at night. Kitchen, bakery, garden, every department we visited, was as thoroughly in order as the most vigilant system could make it. The discipline is mild but strict. There is not an armed man about the establishment, and the keepers, notwithstanding, are very few. The most trustworthy of the convicts have the immediate superintendence of their fellows. A lazy rascal is put to scrubbing, and such menial work. A riot or quarrel is punished with a severe trouncing—obstinate and malicious conduct with solitude, the cell, bread and water. Few cases, however, occur requiring punishment, although certainly a set of more unmitigated rascals, physiognomically considered, never went unhung.* The dread of being removed to the galleys or the chain-gang, no doubt keeps them in order. They seemed all of them to be well fed. I saw their bread, which is coarse, but light and sound. Meat is not allowed them every day. They are regularly tasked, day by day, and are paid for over-work. All under 18 are compelled, and the whole of them are encouraged, to go to school, where they are taught reading, writing, accounts, drawing, and geography. I went into the school-room, which is a fine, spacious apartment, and obviously not gotten up for show, for it had all the marks of being constantly in use, and I saw some excellent specimens of writing and drawing where the scholars had left them. There

* The opposite impressions, as to the countenances of the prisoners produced on the minds of Mr. Hoskins and Mr. Wallis, would seem to show that much reliance cannot be placed on physiognomical estimates made by casual visitors; yet it is beyond a doubt that a great improvement in the expression of the face is often very quickly caused by good training. At the Outcast Boys' Home in Belvidere-crescent, Hungerford Bridge, photographs are taken of the lads from time to time, which exhibit this amelioration in a very striking manner. 'Mr. Driver showed me the entire system of works, but his specimens are capital, and his management of the boys wonderful; he is the Arnold of the Ragged School Managers; and I had rather see his photographs of pupils in different phases of reformation, from the 'raw material' to the six months' boy, than anything in the Royal Academy. Tell all our friends of all religions to call on Mr. Driver, and no one, with heart, or head, or faith, can leave the Refuge without feeling possibly smaller, but certainly wiser.'—*Quarterly Record*, p. xlii.; *Irish Quarterly Review*, June, 1856.—M. D. H.

is a post-office regularly kept in the establishment, and all who conduct themselves well are permitted to write occasionally to their friends, and to receive their replies. Indeed, the villains seemed very happy, for they were at work in the courts, and even outside the walls, some of them, apparently, at their own sweet will, but without attempt or visible inclination to escape. Valencia, to be sure, is very well guarded, and it would not be easy for a fugitive to avoid detection long. A knowledge of this, and of the fact that the eye of the keeper is always upon them from some certain but unknown point, must have a very sedative effect upon their locomotive propensities. When at work they are permitted to converse in a low tone; this is an extremely rational concession to the social tendencies of human nature, which will always gratify themselves in some way, let the prohibition be as stringent and the penalty as severe as it may. A distinguished foreigner, who had dedicated great intelligence and powers of acute observation to the examination of prisons and their discipline, informed me lately, that he had never seen any contrivance for the prevention of inter-communication which the ingenuity of the convicts had not been able to evade. Questionable, then, as is the policy of perfect isolation, at the best, how idle is the attempt to realize it when failure is certain. The sensible guide who went with us through the *Presidio*, attributed a great deal of the docility of its inmates, and the frequent cases of moral improvement, to the humane indulgences which, within strict limits, were permitted by its discipline. I persuaded myself, how justly I know not, that to this moderate treatment was due the refreshing absence of a characteristic so painfully visible in our silent model prisons; I mean the pale, attenuated faces, whose whole expression glares on you through the bright, anxious eyes, condemned to fulfil the duties of sight, speech, and hearing. As we passed through the apartments, all the convicts rose, and stood uncovered. One of them, a comb-maker, had a tame rat upon his shoulder. He had made a collar for it, with little bells, which the creature wore; another had a pet bird fluttering around him. The manner of them all to the keepers was exceedingly respectful, that of the keepers considerate and kind. Our cicerone, who seemed to have both pride and pleasure in our approbation of what we saw, conducted us finally to a show-

house, connected with a large shop at the gate, where there were exhibited, in glass cases, some specimens of elegant workmanship by the convicts, such as knives, pistols, embroidery, and fancy hardware. My companions and myself made our little purchases, and went away well pleased to have some memorials of an institution so excellent, humane, and useful. As the gate closed on us, the last object that we saw was the old garden of the cloisters, with its orange and lemon trees, as fair and fragrant in the den of thieves as once within the house of prayer. A lesson there may be in this impartial bounty of our mother earth, to those whom men reverence, and those whom they despise. It teaches us, does it not, that with a common nature, there are none too pure and virtuous to spurn the claims of the wretched and the outcast? Claims to be held as fellow-creatures; claims to be brought back from sin and sorrow, if it may be; claims, that ignorance and want and temptation be remembered and considered and removed; claims, not to be cast off for ever, while charity can nurse the hope of their return.'

'It will be remembered that several of your witnesses have spoken to the unfavourable effect produced on criminals sentenced to penal servitude, by their being deprived of the privilege of earning tickets-of-leave. The evidence of Capt. Whitty, First Report, pp. 82-3, is worthy of great attention, pointing as it does most forcibly to the results of the policy which has been adopted as regards such convicts. These results have been settled discontent, breaking forth on one occasion into mutiny; a serious depreciation in the amount and value of convict labour, and a permanent relaxation in the endeavours of the men to gain the good opinion of the authorities. The testimony of Captain Whitty, speaking to facts so thoroughly within his own knowledge, requires no corroboration. But as a further and more complete illustration of the principles which gave rise to these facts, let me ask your attention to the statement of Colonel Montesinos, as to the disastrous consequences which have followed the more complete adoption of a similar policy in the treatment of convicts, in the prisons of Spain. Up to a late period, criminals enjoyed the privilege of improving their position while in gaol, and of shortening their terms of confinement, by the exercise of industry and self-control. But

now, by the new criminal code, these powerful stimulants are withdrawn, and that rapid deterioration in the conduct of the men has ensued, which might have been predicted by any person who had taken the trouble to master the rudiments of prison discipline.

‘Let me indulge the hope that the experience of Munich and Valencia, under Obermaier and Montesinos, will encourage all who have the requisite authority so to act, to pursue a similar course, or, at all events, a course founded on similar principles, to that which I learn from the evidence of Captain Crofton, he has inaugurated in Ireland. In particular I refer to the treatment of such convicts as ‘by prison-character and length of servitude are thought eligible for tickets of licence, and who are removed either to Smithfield or Fort Camden, according to their class, to be there detained until they can procure satisfactory offers of employment, or give some sufficient guarantee that they have the means of earning an honest livelihood (for which purpose every reasonable assistance and facility is afforded to them) when they are released on licence. During their detention their reformation and good intentions are further tested by giving them increased liberty of action, and by employing them as far as possible like free labourers.’ p. 142. By such treatment I entertain a confident expectation that the doubt which has pressed on the mind of Sir George Grey, as to the possibility of ensuring reformation by the discipline of a prison, will be removed. ‘The reason,’ he says, ‘why a ticket-of-leave cannot fairly be regarded as a proof of reclamation is obvious. As long as a man is immured in a prison, where he is denied the opportunity of getting drunk, and of associating with those who might lead him into temptation, he is evidently so circumstanced that it is impossible for him to afford us the means of arriving at a satisfactory conclusion as to whether his repentance is genuine or affected.’* The position of the Right Honourable Secretary is impregnable. So long as a man is denied all freedom of action, it is impossible he should acquire the habit of self-control. And even if he could acquire it, he would have no means of manifesting the possession of this great faculty. The course, then, which reason seems to point

* *Times*, April 4, 1856.

out is, from time to time, as rapidly as his progress will permit, to relax the coercion which is exercised over him; to confer upon him by degrees the guidance of his own actions, to cast upon him the consequences of his failures in the art of self-government; and on the other hand to permit him to enjoy the fruits of success whensoever he achieves it. Convicts whose training has been so adjusted as best to fit them for the enjoyment of liberty, will find the change from the last stage of restraint to perfect freedom so slight as to diminish almost to nothing the danger of relapse. And in the frame of mind in which the prisoner will then be found, it will be by no means difficult (if it should be thought desirable) to induce him to stay under the friendly employment of the prison authorities, until he has earned a certificate of good conduct subsequent to the termination of all control over his person.

‘In conclusion, permit me to avail myself of this opportunity of thanking you and the Committee, for the indulgence with which you listened to that part of my evidence which consists merely of opinion. And if it should be found that the language which I have sometimes used, savours of over-confidence in the conclusions at which I have arrived, I ask for your favourable interpretation of my words; assuring you that no man feels more deeply convinced than I do myself, that much remains to be learnt and unlearnt by every student of the science which the Committee has been with so much labour, and, I trust, with corresponding success, endeavouring to promote.—I have, &c.

(Signed)

‘M. D. HILL.

‘To the Right Hon. M. T. Baines, M.P.,
Chairman of the Transportation Committee.’

‘Questions concerning the State Prison at Munich.

‘1. Is Governor Obermaier still at the head of the Munich State Prison?

‘2. Can any statistics be procured which will show the numbers or proportions permanently reclaimed, and those relapsed or re-committed?

‘ 3. Is the prison of Kaiserslautern still conducted on the principles established by Governor Obermaier ?

‘ 4. If there have been any change, either there or at Munich, please to state both the cause and the consequences of such change ?

‘ 5. Have the principles and plans of Governor Obermaier obtained imitators in Germany, or elsewhere ?

‘ 6. Please to specify the places, and state whether they have been successful ?

‘ 7. Have industry and good conduct any operation in shortening imprisonment ?

‘ 8. What are the average annual earnings of each prisoner ?

‘ 9. What is the cost of each prisoner for food, clothing, together with his quota for rent and repairs, and for salaries, &c. ?

‘ 10. What is the proportion between prisoners and officers, including under the term officers all who are engaged on account of the prisoners in and about the prison ?

‘ 11. Are the sentences for long terms, as compared with the sentences in England ?

‘ 12. Is the system approved by those who are considered to understand the subject ?

‘ 13. What is the provision for instruction, religious and secular ?

‘ 14. Is the discharge in all cases absolute, or sometimes conditional, like our tickets-of-leave ?

‘ 15. Is there any system of patronage or guardianship after liberation ?

‘ 16. Are there *Sociétés de Patronage* in Bavaria, similar to those in France and other Continental countries, whose members undertake to watch over discharged prisoners, and young persons leaving reformatory schools ?

‘ 17. If so, how are they organized ?

‘ STATE PRISON AT MUNICH.

‘ *Answers to Questions put April, 1856.*

‘ 1. The Councillor of State, M. Obermaier, is still at the head of the State Prison at Munich.

‘ 2. Every year a return is made by the authorities, indicating individually such of the liberated prisoners as are, after a period of one year from the time of their discharge, to be considered as reformed, such as are still of doubtful character, and those that have relapsed into crime.

‘ From the Penitentiary at Munich were discharged—

‘ In the year 1850, 132 prisoners: 88 of these were reformed, 26 still doubtful, 11 relapsed.

‘ In the year 1851, 70 prisoners: 52 of these were reformed, 7 still doubtful, 6 relapsed.

‘ In the year 1852, 36 prisoners: 23 of which were reformed, 9 still doubtful, 1 relapsed.

‘ In the year 1853, 28 prisoners: 18 of which were reformed, 4 still doubtful, 4 relapsed.

‘ In the year 1854, 32 prisoners: 25 of which were reformed, 2 doubtful, 4 relapsed.

‘ The rest of the discharged prisoners were either in foreign parts at the time the returns were made, or had emigrated, or had died, or their places of abode could not be found out.

‘ 3. The Central Prison at Kaiserslautern is still managed and governed according to M. Obermaier’s principles, in the way which he himself established there.

‘ 4. The answer to this point has been given in the answer to the preceding question, as neither at Munich nor at Kaiserslautern has any change taken place.

‘ 5. M. Obermaier’s principles have been carried out in Bavaria in all the prisons for male offenders; and have also more or less been adopted in other German States, as well as in foreign countries.

‘ 6. Modena is here especially to be mentioned; but how M. Obermaier’s principles have answered in other countries is not known here.

‘ 7. According to the laws of Bavaria, industry and good conduct shorten the terms of imprisonment, according to the following rule:—

‘ The criminal sentenced to ‘penal servitude for an unfixed period,’—see the answer to the 11th question,—may expect his pardon after 16 years’ imprisonment, if, during his incarceration,

or at any rate for 10 years, he have shown continually extreme industry, not have incurred punishment for malice or insubordination, and otherwise have given evident proof of his reformation.

‘ Offenders sentenced to ‘fixed terms of penal servitude,’ or to ‘the house of correction,’ can, under the same conditions, shorten their terms of punishment, and may expect that mercy will be extended to them after having been imprisoned three-fourths of their time.

‘ 8. In the Penitentiary of Munich every prisoner has earned in the six years from 1850 to 1855, an average of 18 *fl.* 50 *xr.* (1 *l.* 12*s.* 11½*d.*) per annum, deducting all expenses connected with and arising from his employment.

‘ It has to be stated here that this average account includes the sick, as well as those which are either unable to do any work, or whose capability for work is but limited; and that the work about and connected with the establishment, such as sweeping, washing, cooking, cutting the wood, mending, cleaning the house and yards, &c., which is entirely done by the prisoners, has not been taken into account.

‘ 9. In the prison at Munich the average yearly expenses during the above-mentioned six years were, for every prisoner,—

	<i>fl.</i>	<i>xr.</i>	<i>£</i>	<i>s.</i>	<i>d.</i>
For maintenance	68	18	5	19	6 ⁹ / ₃₀
For dress and bed	13	3	1	2	10½
For heating and lighting	6	30	0	11	4½
For salaries of every description	16	16	1	8	5 ¹⁹ / ₃₀
The entire expenses per prisoner amounted to	115	53	10	2	9 ³³ / ₆₀

‘ But in reference to the above estimate three points must be remembered :

‘ 1st. In the years 1853, 1854, 1855, the prices of provisions were exceedingly high.

‘ 2ndly. The prison at Munich is an old Government building, and was handed over to the prison authorities without charge; no notice can therefore be taken of the amount of rent, and of the annual interest on the capital laid out in the arrangements of the building, and its adaptation to its present use.

‘ 3rdly. The expenses of keeping the prison in repair are not borne by the institution, but are provided from other sources.

‘ 10. The officers appointed at the Penitentiary at Munich are,—

One director.
One treasurer.
One legal officer.
One clerk.
One book-keeper.
One clergyman.
One teacher.

One physician.
One surgeon.
One bailiff or master of the house.
Two workmasters.
One gardener.
Twenty gaolers.
A picket of twenty soldiers.

‘ The number of prisoners amounts continually to 550—600.

‘ 11. The criminal laws of Bavaria include the following punishments of personal restraint :

‘ 1st. The sentence to the chain, which can only be awarded for life. The criminal sentenced to this punishment is fettered on both his feet by a long chain, to which a heavy iron ball is attached.

‘ 2nd. The punishment of penal servitude, which is never awarded for life, but either for a fixed number of years, or for an unfixed period.

‘ The criminal sentenced to penal servitude for a time not specified may, after sixteen years’ imprisonment, expect his liberation on the conditions named under s. 7.

‘ The sentence of penal servitude for a definite period may not be awarded for more than twenty, nor for less than eight, years.

‘ The criminal sentenced to penal servitude carries a lighter chain.

‘ 3rd. The sentence to the house of correction, which cannot be awarded for more than eight, nor for less than one year.

‘ 4th. Common imprisonment, which can be given for any period not exceeding two years.

‘ It is not known here if these punishments of personal restraint can be compared to those given in England.

‘ The prison at Munich confines only offenders sentenced either to the chain or to penal servitude, or to the house of correction for more than four years.

‘ 12. In Bavaria, as in the whole of Germany, there are two parties, which hold opposite opinions on the subject of prison discipline ; the one advocating the method that allows inter-communion among the prisoners, and the other adopting the principle of solitary confinement. M. Obermaier’s plan is approved of by the former, and disputed by the latter.

‘ 13. At the prison of Munich, in which only Roman Catholic offenders are confined, a special clergyman is appointed, who officiates at regular divine services, gives religious instruction and the holy sacraments to the prisoners, and who otherwise, in concert with the director, labours for their moral improvement and reformation.

‘ The prisoners not too far advanced in age receive elementary instruction, to which end a special teacher is appointed.

‘ There are also books on religious and generally useful subjects belonging to the establishment, in the reading of which the prisoners can fill their spare time in an appropriate and useful manner.

‘ The instruction in the different branches of work introduced into the establishment is given by the appointed masters of the work, and, under their direction, by the more clever prisoners.

‘ 14. The discharge of the prisoners is in all cases absolute, except under very particular circumstances; for example, in cases of illness or urgent family affairs, where the special mercy of the King permits, though but for a short time, the liberation of a prisoner.

‘ Arrangements which can be compared to the tickets-of-leave do not exist in Bavaria.

‘ 15. Relative to the care of the liberated prisoners, and to the watch over them, the laws of Bavaria determine that—

‘ 1st. The parish in whose district a prisoner has his home is obliged to care for his maintenance and his employment after he has left the prison, and six weeks previous to his discharge is made acquainted with it.

‘ 2nd. The prisoner, after his discharge, is put under the especial surveillance of the police.

‘ In the case of those who had been punished with confinement in the house of correction, or with minor punishments of personal restraint, this surveillance is exercised only in those cases where the prisoner, by his mode of life, or by his character or conduct, has created the impression of being especially dangerous to society.

‘ 16. Bavaria has societies of this character.

‘ 17. The organization of these societies is generally the following:—

‘ Every province has one of these societies, with a managing committee in its capital, called the Provincial Committee.

‘ As a general rule, every district in the province has another committee, termed the District Committee.

‘ The members of the society resident in the district elect the district committee, and the district committees elect the provincial committee.

‘ The committees are chosen for three years.

‘ From among their own number the members of the committees elect a president, a secretary, and a treasurer.

‘ The business of the district committee is to accept the offers for membership to the society, to manage the finances of the society in the district, and to do everything that may be necessary for the reformation of the discharged prisoners of their district, and for the assistance to be rendered to them.

‘ Six weeks before a prisoner is discharged, the governor or director of the prison gives a notice thereof to the district committee in question, accompanied by full particulars as regards person, religious profession, education, and trade of the prisoner, as well as regards the hopes which may be entertained of his reformation, and the sum of money he brings from prison, and the reasons which make the assistance of the society desirable.

‘ The district committee then undertakes the support or employment of those discharged prisoners, whom it deems proper objects for the exercise of its benevolent intentions, and does so with special regard to all the particular circumstances connected with each case, and exercises, at the same time, a perpetual personal supervision over all the persons it may have taken under its care.

The district committee is, by its labours, in constant communication with the police authorities and other district committees, with a view to mutual assistance.

‘ Every quarter the district committee sends an account of the state and the activity of the society in the district to the provincial committee.

‘ The provincial committee annually compiles a financial and general statement of the position of the society in the province.

‘ Every district committee gives a certain share of its income to be disposed of by the provincial committee.

‘ The provincial committee divides these contributions, and

any other income it may enjoy, amongst those district committees which require assistance, or amongst other kindred institutions.

‘Of late, the attention of these societies has chiefly been directed to the establishment of asylums intended to receive those discharged prisoners who, at the time of their discharge, do not appear to be fully reformed, or are unable to find elsewhere immediate proper employment and a home.’

‘THE PRISON AT VALENCIA.—*Questions and their Answers.*

‘Q. 1. Is Colonel Montesinos still at the head of the prison at Valencia?’

‘A. 1. Colonel Montesinos is not now at the head of the prison of Valencia, having relinquished his office. By the system which he established, the prisoner was made aware that by behaving well, by applying himself to the acquisition of some art or trade, and by good moral conduct, he would ameliorate his present treatment, and improve his future position; and the desired result had been obtained of diminishing to two per cent. the annual recommitments, which had formerly amounted to 35 per cent. The publication of the new penal code, which converted sentences of imprisonment for a long period of years into imprisonment for life, and which deprived the governor of the prison of all power of alleviating the condition of the convict, however much he might deserve it, or however desirable it might be as a stimulus to the others, took from the unhappy prisoner all hope that his industry or good conduct would avail him anything. Unconsoled by the hope of improving their lot, Colonel Montesinos observed that the convicts lost their energy, a feeling of despair spread among them, and their ardour in acquiring a trade abated; indeed, that they continued to work at all was the result of discipline and consequent subordination, but they laboured without zeal, without any love of work, and without the hearty good-will they had exhibited before the introduction of the new penal code. Finding no means by which he could counteract this terrible evil, which utterly destroyed his system, Colonel Montesinos resigned his appointment.’

‘ He had, moreover, another reason—namely, that the promulgation of the said code was followed by the appointment of incompetent persons as officers, who, faulty in character, and having other unfavourable qualities, could not produce good results.

‘ In such an enterprise as this, those who are in command must have received a regular education, be of correct behaviour, and they must be irreproachable in conduct and morals; for those who come under their care having sinned through lack of these very qualities, and it being the object of the law to reform, while it punishes, he whose duty it is to foster them must himself possess the principles whose practice he has to enforce, for if he be ignorant of them he will be unable to procure their adoption. It is worthy of remark here, that, according to the observation of Colonel Montesinos, there are but few persons in Spain who are criminal from natural depravity, but the greater number fall into crime through want of education and good principles.

‘ He has reclaimed many convicts who had received very severe sentences, who are now settled in their homes, working at their trades learnt in the prison of Valencia; they are excellent in their domestic relations, and have become examples of good conduct.

‘ Q. 2. Can any statistics be procured which will show the number or proportion permanently reclaimed, and those relapsed or recommitted?

‘ A. 2. This question is partly answered in the former reply. As the data for preparing the desired statistics are in the archives of the prison, and are not at hand, they cannot be given here. The reduction in the recommitments of those who had undergone their sentences in the prison of Valencia was so striking, that it was remarked by the tribunals of the province, who brought it under the notice of Government.

‘ Q. 3. Is the prison of Valencia still conducted on the principles established by Colonel Montesinos?

‘ A. 3. The same material organization remains, but the spirit of his internal arrangements has disappeared since the Colonel departed, to such a degree that in the workshops scarcely any work is done, and what is accomplished is badly performed; the remarkable cleanliness and order which was for-

merly observed has disappeared ; desertions, then so exceedingly rare even of those who worked outside the walls, now amount to a most disgraceful number, so that there have been as many as 43 convicts at once under heavy punishment for attempts to escape.

‘ Q. 4. If there have been any change, please to state both the cause and the consequences of such change ?

‘ A. 4. This question is answered in the preceding replies.

‘ Q. 5 and 6. Have the principles and plans of Colonel Montesinos obtained imitators in Spain ? Please to specify the places, and state whether they have been successful ?

‘ A. 5 and 6. There have been no imitators in Spain of the penal system of Colonel Montesinos, but as Inspector-General of all prisons in the kingdom, he established therein his system, which produced more or less favourable results, according to the character and disposition of their respective governors. Some improvement, however, was visible in all ; workshops were introduced which were profitable to the treasury, and, above all, the moral benefit to the convicts was very apparent. That the good results were not more universal was owing to an impediment, which, in spite of his utmost efforts, the Colonel was never able wholly to overcome. It arose thus : when re-organizing any establishment, he laid down a plan in accordance with his penal system, and himself put it in execution ; during his stay there, all went on well, and everything got into its proper place, but as soon as he went away, the imperfect regulations which the General Board of Prisons did not care to reform, were brought back into force, and confusion again prevailed. Nevertheless, the doctrines of Colonel Montesinos remained, and gradually, with much labour on his part, regained their former ascendancy. The effects they produced were always good in a greater or less degree, and brought some revenue to the Treasury.

‘ Q. 7. Have industry and good conduct any operation in shortening imprisonment ?

‘ A. 7. Before the promulgation of the new penal code, the industry and good conduct of the prisoner did operate to diminish his imprisonment ; the maximum of the remission which they could gradually effect being a third part of the sentence, and no more. Guided by the strictest principles of

justice and indubitable information, the good produced by this regulation was immense. The public, already avenged, was uninjured by it; it afforded a stimulus to other convicts, who strove to win the same reward: and, besides these obvious advantages, the Treasury saved the cost of supporting the prisoners who had gained their freedom under that wise provision.

‘Q. 8. What are the annual average earnings of each prisoner?’

‘A. 8. This depends on his greater or less disposition to labour, and upon the nature of the occupation which he may adopt, as some are more profitable than others. There have been prisoners who had earned as much as 2000 reals,* or more, at the termination of their imprisonment.

‘Although it is not asked, I will explain the mode of payment pursued by Colonel Montesinos. He never paid by the day, but by the piece, when it had been examined and approved. Every trade had its tariff for the number of pieces into which its work could be divided; these were credited every week to the respective accounts of each workman, being entered in a little book, which he kept himself, and a similar entry was made in the general book. The half of what they earned went to the State, the other half was divided into two parts; one, or the fourth part of the whole, was placed in the savings bank, in order that, at the end of his imprisonment, the convict, to whom it was punctually paid, might have it for the expenses of his journey, (another source of economy to the State), and for establishing himself in any place where he might decide to live; the remaining fourth part was paid into his own hands, that he might obtain tobacco, the only indulgence in which he was permitted to spend his wages; or purchase food, as the establishment supplies only two meals a day; or that he might transmit it to his family, if in want.

‘Q. 9. What is the cost of each prisoner for food, clothing, together with his quota for rent and repairs, and for salaries, &c.

‘A. 9. For food, clothing, light, fuel, and medical attendance, the cost is 60 maravedis (4*d.*) per diem; two reals (4½*d.*) per diem cover the whole expense of each prisoner, including the

* 2*ol.* A real is worth 2½*d.*; 100 reals may be reckoned as equal to 1*l.*—*Tr.*

items already enumerated, besides repair of clothes, washing (which they do themselves), shaving, furniture, entrance, and the elemental school.

‘ Repairs done to the building cost very little, for as there are always masons, smiths, carpenters, and stonecutters among the convicts, the sum that has to be divided among them is the price of materials alone, and even of these, lime, plaster, tiles, and bricks may be made by the prisoners ; this depends upon the will and zeal of the governors of the different prisons.

‘ Q. 10. What is the proportion between prisoners and officers, including under the term officers all who are engaged on account of the prisoners in and about the prison ?

‘ A. 10. For each hundred prisoners are required one capataz (overseer), chosen from among retired sergeants in the army, four cabos primeros, and four cabos segundos, selected from the prisoners. When there are 200 convicts, the superintendent is a subaltern officer, having under him capataces and cabos, and these are called a detachment. When the above number is exceeded, and amounts to 400 prisoners, the establishment is denominated a prison of the second class, having a comandante, chosen from officers of high rank (*Gefes del Ejercito*);* a mayor, from captains in the army, who takes charge of the accounts ; an ayudante, from the subaltern officers ; and for each hundred men, the capataz and cabos already mentioned. There are besides, in some provinces, where the number of prisoners is greater, prisons of the first class, with the same staff of officers ; and in these two classes of establishments there is also a warder (*furriel*), a chaplain (*capellan*), and a surgeon (*medico-cirujano*). It will cause surprise that the criminals themselves should be employed as cabos, and should be permitted to exercise authority, but the experience of many years has proved the utility and economy of the arrangement ; its utility is shown in this, that (selected with due discretion) the men are thoroughly acquainted with their companions, with whom they live in constant intercourse ; they understand their predilections and desires, are aware of their propensities, and foresee their actions, and thus are frequently able to avert the necessity for

* Officers of a certain rank in the army claim the appointment of comandante as of right.—*Tr.*

punishment. As they obtain consideration, besides deriving benefit in other ways, from their office, they endeavour to retain it by performing its duties well. Moreover, this arrangement affords a stimulus to the rest to behave well, that they may in their turn be promoted. From among these latter are chosen the *cabos segundos*; and from these, according to the proofs of reformation and of repentance they give, and provided they are under light sentences for only slight offences, are selected individuals to replace the vacancies which may occur among the *cabos primeros*.

‘These details are necessary that the advantage and economy of employing the convicts as inferior officers may be thoroughly understood. Colonel Montesinos, in his written Memoirs says, when explaining and advocating this measure, ‘the commandant who knew how to choose his officers would have no untoward events to lament in his prison,’ which is proved by the fact that during the twenty years of his governorship of the prison of Valencia he never needed an armed force for the guard within the walls, nor even for that which accompanied the gangs of prisoners who worked outside, amounting in number often to 400 men, for whom the convict officers were quite sufficient, and among whom there were never either plots* nor desertions.

‘The salaries of the officers which were overlooked in a former answer are here stated:—

	Reals.		£	s.	d.
Comandante	16,000	or	160	0	0
Mayor	10,000	„	100	0	0
Ayudante	6,000	„	60	0	0
Furriel	4,000	„	40	0	0
Capellan	3,300	„	33	0	0
Medico Cirujano	4,400	„	44	0	0
Capataz	3,000	„	30	0	0
Cabo 1 ^o	182	about	1	16	5

‘In prisons of the second class, the salary of the

	Reals.
Comandante is	12,000
Mayor	10,000
Ayudante	5,000

and 2000 reals are allowed in addition, to the comandante and mayor, for counting-house and printing expenses, &c., &c.

* The word here used in the Spanish MS. may possibly mean ‘complaints.’—Tr.

‘ Q. 11. Are the sentences for long terms,* as compared with those in England?

‘ A. 11. Not knowing whence these questions have been sent, the comparison cannot be made. The heaviest sentences are for twenty years, or perpetual imprisonment in chains (*cadena perpetua*); but there are criminals who have received two or three sentences to *cadena perpetua*, besides several years of imprisonment, for different offences committed by the same person.

‘ Q. 12. Is the system of Colonel Montesinos approved by those who are considered to understand the subject?

‘ A. 12. It is not only approved by those who understand the subject, but praised for its simplicity, for its proved advantages, ascertained results, and marked economy. Among the many documents which record and corroborate this statement, are twenty-two foreign publications which regard it as the best system of prison discipline. Of these, one only is English (notwithstanding the infinite number of English persons who have visited the prison at Valencia), written by Captain Macnochie, R.N., K.H., who describes it, and its internal organization, with great care, minuteness, and accuracy.

‘ Q. 13. What is the provision for instruction, religious and secular?

‘ A. 13. Instruction is given in the Apostolic Roman-catholic religion, the sole faith of the country, in reading, writing, arithmetic, and in the trade which the convict voluntarily selects among those established in the prison, of which there were forty-one when Colonel Montesinos was governor. In his time, too, there was an evening school for linear drawing, applicable to trades.

‘ Q. 14. Is the discharge in all cases absolute, or sometimes conditional, like our ticket-of-leave?

‘ A. 14. On liberation the convict is still subject (if the sentence was so expressed) to the surveillance of the authorities in the place where he may fix his residence, for a certain number of years appointed by the tribunal by whom he was sentenced.

* The translator of the questions into Spanish put this sentence in another form, omitting, by an oversight, to mention England.—Tr.

‘ Q. 15. Is there any system of patronage or guardianship after liberation?

‘ A. 15. There is no other system of patronage or surveillance for those who have been under punishment than what is stated in the preceding answer.

‘ Q. 16. Are there *Sociétés de Patronage* in Spain similar to those in France and other Continental countries, whose members undertake to watch over discharged prisoners and young persons leaving Reformatory Schools?

‘ A. 16. There are neither any such societies in Spain, nor are there Reformatory Schools for young persons.

‘ Q. 17. If so, how are they organized?

‘ A. 17. This question is answered in the preceding reply.’*

‘ PRISON DISCIPLINE.

‘ *To the Editor of the ‘ Illustrated London News.’*

‘ Munich, 25th July, 1854.

‘ I have found here an unexpected illustration of the power of the moral sentiments and intellect to govern and reform criminals, without using the lash or any severe punishments, and also irrespective of all theory or system. Herr Regierungsrath Obermaier is the Governor of the Criminal Prison of this city, and has under his charge above 600 of the worst male convicts, collected from all the districts of Bavaria. Their sentences extend from eight to twelve years’ imprisonment, and some of them for life. Their crimes have generally been attempts to murder, murder with extenuating circumstances, or highway robbery. A more unpromising collection of convicts could scarcely be imagined; and yet here there are no separate cells, no severe discipline, no paid superintendents, except a turnkey to each ward, whose station is outside the door, and who does not see into the apartment. The prisoners are collected in workshops, to the number of ten, twenty, or thirty,

* Transportation Committee, House of Commons, 1856. Appendix to Second Report, p. 160.

according to the size of the room ; for the prison is merely an old cloister, and they labour each in a trade, under the superintendence of one of themselves. They sleep in similar groups, and have each a separate bed, a straw mattress, two very clean white sheets, a pillow, and a white blanket.* In winter there is a large stove in each sleeping-room, and also in each workshop. They eat in common, take exercise in the yards in common ; and, in short, are under no perceptible restraint, except the prison bars and walls ; and look much more like men working quietly in different branches of production, in a great manufactory, than a collection of desperate criminals undergoing penal sentences. They card wool and flax, spin both, dye the wool, weave both, and dress both the linen and woollen cloth, so as to complete them for use. There are tailors, carpenters, shoemakers, and blacksmiths' workshops ; and in none of them is any intelligence, except that of the convicts themselves, employed either to teach or superintend. The bars on the window are so slight, and so many tools are entrusted to the convicts, that escape could be easily accomplished, for outside there is only one soldier, and he cannot see a fourth of the windows ; yet the culprits do not break the prison ; they obey cheerfully, they work diligently ; and there is an air of mental calmness about them that is truly extraordinary. Of course they differ in mental condition, and moral expression, as their brains and training vary ; but I mean to say that there is a moral calmness even in individuals with the worst brains, and a soft moral and intellectual expression in those who have the best brains, and been longest in prison, that speaks unequivocally of the success of their treatment.

‘ How has all this been accomplished ? By the genius of one man, Herr von Obermaier ; I say genius, because it appears to me that he, and such men as Mr. Nash, in London, and Candidat Wichern, at Hamburg, who are able, by the mere influence of their moral and intellectual faculties, to tame, guide, and instruct the rudest and most brutal of their countrymen, indicate a mental power, original, effective, and beneficent, which works independently of rules, and cannot be communicated,

* The sleeping-rooms are overcrowded, and there is no provision for proper ventilation ; the consequence is, great sickness and mortality.

and which may, therefore, be regarded as genius for the moral government of men. Be this as it may, I proceed to explain his method of treatment.

‘ ‘ How do you,’ said I, ‘ deal with a rough, passionate, proud, determined character, who spurns your authority, and means to defy you if he can ? ’ ‘ Every prisoner,’ he replied, ‘ is brought before me on his entrance, and I converse with him. I ask him if his father or mother be alive ; if he has a wife and children, brothers or sisters ? And how they must feel degraded by his crime and sentence. I appeal to him through them ; I tell him that I am his friend and not his enemy. That I regard him as sent to me to be reformed, and not merely to be punished. I explain to him the rules of the house, and tell him that they are all calculated for the improvement of the prisoners ; that if he will be my friend I shall be his : and that suffering and misery will overtake him here only in consequence of his own fault. The rudest natures,’ he continued, ‘ can rarely resist such an appeal. The big tears often roll down cheeks that were never wet with weeping before, and I soon make them feel that my words are not speeches, but the expression of actual things. I give the new-comer into the charge of the superintendent of the department for which he is most fitted, and recommend him to his care as his friend and adviser ; and I appeal to the other men in his behalf. Should the new convict, as frequently happens, not believing in the reality of the law of kindness, begin to behave ill to his fellow-convicts, they soon check him and set him right. The public spirit among them is in favour of obedience and steady conduct, and they say to him,—‘ That conduct will not do here : Herr von Obermaier is our friend, and we shall not allow you to act contrary to the rules of the house.’ ’

‘ ‘ But,’ said I, ‘ at night are not all abominations practised, or how do you restrain them ? ’ ‘ You see,’ said he, ‘ that there is a space between each bed ; an overseer, one of themselves, whom I can thoroughly trust, is on watch all night with a bright light burning in every room, and every offence is observed and reported to me. I use persuasion with the offender—punish him by withholding part of his food, or depriving him of some other enjoyment—and he generally gives up his misconduct. When the general spirit of the men is directed towards virtue,

an individual finds it extremely difficult to persevere in vice in the face of their condemnation.'

'Have you any rewards for good conduct?'—'Yes; the men are paid for their labour; a certain sum is deducted for their food, which is wholesome and nourishing, including meat three times a week; they are allowed to spend a certain sum in extra comforts, if they please; and a third portion is allowed to accumulate as a means of support at their discharge.'

'What percentage return to this or other prisons after expiry of their sentences here?'—'Out of thirteen hundred, eleven hundred have been reformed.' 'Have you any moral staff to assist you?'—'Only a schoolmaster and a chaplain.' From all I could learn, these perform only their official duties, and he himself is the sole governor, guide, judge, and friend of the prisoners.

'I see,' said I, 'that this establishment is penetrated to the core, and in every department, by your spirit. Are there any young men sent to you by the Government, to imbibe it from you, so as to be able to carry on the good work when age shall have impaired your powers?'—'No: foreigners come here and inquire into my plan—many such come—but here I am nobody; the Ministers grudge the expense; and many persons complain that I make the prisoners too happy. Nobody thinks it an honourable thing to manage a prison; and when I die—a shrug of the shoulders finished the sentence.

'I told him of Pentonville and the English prisons. 'I know all about them,' said he: 'I have considered their merits in a pamphlet, *Die Verhandlungen über Gefängnisreform, &c., oder die Einzelhaft mit ihren Folgen.*'* Read it, and you will understand my views.'

'I have read it, and find that he condemns the principle of vengeance or punishment, the lash, the separate system, and all inflictions calculated to embitter the prisoner's life. He maintains that criminals cannot be improved by severity, and that an enlightened spirit of humanity, emanating from the governor, and through every individual of the prison, will supply the most perfect guarantee for obedience, diligence, and individual morality that can be procured. 'If once,' says he, 'the prison

* Abstracted into English by M. Rehbann. See *ante*, p. 544.

is pervaded by a sound public opinion, and the desire of improvement has gained the ascendancy, then the reformed penitents (Büsser, for he avoids the word convicts), become such powerful instruments of further improvement that complete security in every department, and for every individual, is established; a security so great that one cannot expect always to find the like of it beyond the walls of the prison.' 'When,' he adds, in large print, 'the whole system of a prison is founded on humanity, the most unbounded confidence in the overseers is the natural consequence; loyalty to the general good, speedily becomes the object of all; and when this has once been established, gross excesses, scandalous behaviour, and brutality are no longer to be apprehended; in general, they are no longer possible, and become exceptions very rarely occurring.'

'Here, then, we have a prison without classification of prisoners—without a staff of moral superintendents—without the prospect of abridged confinement as a reward for good conduct—without the lash, the solitary cell, the treadmill, the crank-wheel, pious visitors, or any of the other appliances regarded as indispensable elements of prison discipline in England, and the place of them all is supplied by the enlightened humanity of one man!

'Herr Obermaier is apparently between fifty and sixty years of age, of military aspect, and quite a gentleman in manners and station. He has been many years employed in the prison department. He is of middle stature, well made, has a brain of full average size, largely developed in the moral and intellectual regions, with a moderate base. His temperament is nervous, sanguine, bilious. He is distinguished by a soft, kind, true, yet firm manner; a clear, active, penetrating intellect; an unpretending earnestness; and, when he finds that he is appreciated, his eye glistens with touching flashes of moral enthusiasm that commend him to one's love and esteem.

'What conclusion, then, can be drawn from this example? In my opinion only one: that the spirit of enlightened humanity is the most effective instrument of prison discipline—the cheapest and the safest for the public, and the best adapted to reform offenders. But I do not say that, in the hands of every man, it is capable, without rules or assistance, of producing such results as I have here described. Herr Obermaier is, in

his own department, what George Bidder was in calculation, Arkwright and Stephenson in mechanical invention, what Shakspeare was in poetry—a man inspired by nature to do things which common men cannot accomplish, and to do them by a kind of practical instinct, the exact operation of which he cannot explain. But a man of an analytic and instructed intellect may observe the great principles which such geniuses are seen to follow, and the means by which they carry them into practice; and he may teach these to minds congenial to theirs, although not so highly gifted in self-originating power. We must observe and judge of the circumstances also under which these moral phenomena appear. In Bavaria there are no large manufacturing towns, and the self-determining action engendered by free institutions is unknown. The Bavarian criminals, therefore, differ considerably from the English in character. Herr Obermaier told me that the great majority of them have come to him grossly ignorant and very ill brought up, and that they have become criminal under the influence of drink, passion, or evil example. I saw great varieties in the forms and sizes of their brains. Some are almost cretins, and, to some extent, idiotic; others have large animal and intellectual, with deficient moral, organs; others have large animal, with both the moral and intellectual organs deficient; while a very considerable number have the three regions—animal, moral, and intellectual—equally and pretty fairly developed. These constitute the elements by which the prison is ruled. Herr Obermaier exerts an influence on these men of the most powerful and beneficent character, and attaches them to himself and to the cause of order and virtue by that moral charm and practical administrative talent which he so largely possesses. The reflecting intellect is higher in the German race than in the English; and in prisoners it is also distinguishable. They are less impulsive, less opinionative, and calculate consequences better. In temperament, also, they are more lymphatic, and they have been accustomed to institutions in which the priest, the King, and the law rule supreme, and subjects only obey. Grumbling and resistance are not allowed to Bavarians at large, and prisoners do not feel themselves so much aggrieved by command and restraint as an English thief and robber, accustomed to a lawless and reckless life, naturally does. There were about

a dozen of men working in chains, with iron balls at their feet. They had very low brains ; but even they were quiet ; and the chains were part of their sentences, and not imposed in prison. On the contrary, Herr Obermaier had diminished the weight of both chains and iron balls, so as still to comply with the law, while he mitigated its severity. In the prison, also, the men were carding wool, and spinning flax with the hand, not because the governor was unacquainted with machinery, but because he found it difficult to give employment to so many individuals, if he substituted mechanism for manual labour, and he reckoned useful employment an indispensable element of success. Finally, the hours of labour, of meals, of exercise, and instruction were so judiciously arranged as to combine continuity of application with change of occupation, and thus to avoid at once dissipation of interest, and ennui from monotony.

‘ Without, therefore, supposing that the system here pursued may be successfully transferred to England, and that it will work equally well in the hands of English prison governors and on English criminals, all that I should recommend would be that its *spirit* should be adopted, and wrought out in good faith, under modifications suited to English circumstances.

‘ Knowing how deep an interest you take in this department of human suffering, I trust to your excusing the great length of this epistle, and

‘ I remain, my dear Sir, very truly yours,

‘ GEO. COMBE.’

Whatever fell under the immediate observation of a witness so intelligent and so trustworthy as Mr. Combe, would have great weight, even if not corroborated, as it is, by its agreement with the impressions produced on other visitors. But he is in error in stating that the prisoners at Munich are ‘ without the prospect of abridged confinement as a reward for good conduct.’ This appears by the answer of the Bavarian Minister of the Interior to my seventh question ; unless, indeed, the law to which reference is there made was passed subsequent to Mr. Combe’s visit.

With regard, however, to the speculations of this writer as to a difference of results likely to be produced by similar treatment in Bavarian and English prisons, each reader will

judge for himself. The reasoning does not appear to me very forcible. The absence of free institutions and other analogous causes may produce a more submissive tone of behaviour, as between inferiors and persons in authority, in Bavaria than in England; but it is to be remembered that malefactors break through these and all other restraints, and will probably be driven by that circumstance into an opposite extreme. The Spaniards have preserved a personal independence of character very remarkable, and they are sufficiently impatient of restraint. Yet, according to the experience of Colonel Montesinos, a course of discipline closely resembling that practised by Obermaier, has been followed by much the same results.

As to the importance of encouragement while the convict is in confinement, this passage from Mr. Chesterton's book may be read with advantage:—

‘ Here let me say, that the utmost care must be taken not to drive criminals, adjudged to undergo the longest sentences, into a state of desperation by the withdrawal of all hope of alleviation. Perseverance in good conduct, unwearied industry, and perfection in mechanical arts, useful to the establishment, might be made to entitle convicts, thus distinguished, to an improved condition, to more generous fare, and to privileges of various kinds, graduated by a discreet consideration of what may befit so exceptional a society. My experience has revealed to me the *impossibility* of working exclusively by coercion. You must not, by extremities, reduce to despair; you must improve the disposition and elevate the mind by rational encouragement, assured that kindness and discriminating mercy will beget suavity, and a grateful recognition evidenced by behaviour.’*

The following extract from Captain Crofton's pamphlet, entitled *A Few Remarks on the Convict Question*, brings up the results of his method of training to the commencement of the present year. Not to speak too confidently of an experiment, it may reasonably be hoped that he has overcome the difficulties of the intermediate stage between prison life and freedom,—the

* *Revelations of Prison Life.* By George Laval Chesterton. London: Hurst and Blackett. 1856. p. 52.

interval during which physical restraints are greatly relaxed, and the genuineness of the prisoner's reformation is tested before the prison authorities have lost their hold upon him :—

‘ The system pursued is this—

‘ ‘ Well-conducted convicts,’ not guilty of heinous offences, and eligible for tickets-of-licence by length of servitude, are removed,—if conversant with any trade, to ‘ the Smithfield Penitentiary, Dublin ;’ if labourers, to the forts at the mouth of Cork Harbour,—for the purpose of being tested by such a modified degree of liberty as shall in various ways prove their power of self-denial and self-dependence, in a manner wholly incompatible with the rigid restraints of an ordinary prison. I will confine myself to a description of the practice pursued and the results obtained in Dublin, as being more matured than the other establishments, as well as under more immediate observation ; but I may state generally that the results obtained at the forts have been excessively satisfactory.

‘ The average number confined at Smithfield at one time has been about eighty. The average period of confinement is about four months ; at the expiration of which time, if satisfactory offers of employment are made, and if the prisoner has, in his new stage of probation, shown his fitness to be trusted with conditional liberty, he is discharged with a ticket-of-licence. The tests alluded to are the employment of prisoners on messengers’ duties daily throughout the city, and also in special works required by the department outside the prison walls. The performance of the duties of messengers entails their being out until seven or eight in the evening, unaccompanied by an officer ; and although a small portion of their earnings is allowed them weekly, and they would have the power of compromising themselves if so disposed, not one instance has as yet taken place of the slightest irregularity, or even want of punctuality, although careful checks have been contrived to detect either, should it occur.

‘ Lectures are delivered every evening, at which habits of self-control are inculcated, as well as the desirableness of new fields of labour for the discharged prisoners, whither they may transfer themselves, by means of the proportion of their prison earnings which is allotted to them, aided by their savings from

subsequent employment. They are encouraged to deposit their earnings in the savings bank on leaving prison, and to add to these savings through after labour. Although this plan has only recently been added, there are already many depositors, and the amount of savings out of the earnings of convicts who have been released, wholly or conditionally, accumulated under circumstances which must have required great steadiness and self-denial, must be gratifying to the lecturer (Mr. Organ), through whose indefatigable energy mainly this has been attained. The results have been these—

‘*In the Penitentiary* the greatest possible order and regularity, and an amount of willing industry performed that cannot be obtained in the prisons; an advanced stage of intelligence and general information on subjects likely to be practically useful to the men at home and in the colonies, rapidly acquired by means of apt illustrations and the use of simple language on the part of the lecturer.

‘The tests adopted have been deemed so satisfactory, that prisoners, who of themselves have no means of procuring employment, have, through the instrumentality of the lecturer, obtained employers, who have every facility placed at their disposal for satisfying themselves as to the antecedents of the convict, and who have on many occasions returned for others in consequence of the good conduct of those at first engaged.

‘The officers attached to the Penitentiary are tradesmen, and give the public the benefit of their labour.

‘Within the last year 112 prisoners have been discharged from the Penitentiary on licence, and fifty-five discharged absolutely at the termination of their sentences. As yet only five tickets-of-licence have been revoked, although directly it is known that a convict is leading an irregular life, it is usual to withdraw his licence according to its terms. It is possible and probable, however, that others may have subjected themselves to its revocation, though the fact as yet is not reported. A system of registration has now been established, which will be the means of procuring positive information of the conduct of a convict on licence.

‘The above statistics are only valuable in connexion with others; but it has been ascertained from positive information,

that eighty-five are going on satisfactorily out of 112; nine have been discharged too recently to be spoken of, and five have had their licences revoked. As to the remaining thirteen, it has been found impossible to obtain accurate information, but it is supposed that five have left the country and three enlisted.

‘Of the eighty-five going on satisfactorily, thirty are within weekly observation and report, and are serving their employers faithfully; and in many instances, the single men are depositors in the savings bank, with a view to emigration when free. Now, it is fair to assume that the proved conduct of thirty men, trained under the same system as the remainder, may be taken as a fair type of the class similarly discharged; and not too favourable a type, because they are surrounded by the temptations of a city, and had antecedents so bad as to have interfered with their procuring employment for themselves.

‘There are numerous phases in the treatment of prisoners in the ‘intermediate stage,’ which it will be unnecessary to detail;—it is sufficient to say generally, that nothing is neglected which can possibly conduce to the object in view consistently with the coarse fare every prisoner should receive, and the amount of diligence he should be compelled to exercise.

‘Moveable iron huts have been constructed for the purpose of carrying out public works by convicts in the same stage of treatment. It is beyond question that the application of selected convict labour, which can be so easily located where required, will be a saving to the public service as well as a means of reformation to the prisoners. The great difficulty at first was in procuring suitable prison officers to give effect to such a system. I do not now consider this by any means insuperable; the supply will soon follow the demand if we are judicious in our requirements and cautious in our selection. As, however, much depends on the qualification of the officer, it is well that he should be trained for the purpose.

‘Prisoners in the intermediate stage who misconduct themselves, are at once re-consigned to more penal treatment, as having failed in their probation. The Penitentiary thus operates as a *filter* between the prisons and the community.

‘It has been deemed advisable to fix the gratuities very low in the penal stages, and to increase them in the intermediate

stage; the incentive to good conduct and the recompense of it are thus both increased.*

It is much to be regretted that estimates of the reconvictions of convicts discharged in England and Wales on tickets-of-leave, placing the proportion as low as 10 per cent., should have been laid before Parliament and the public. The *data* for such calculations are non-existent, because of the want of means for identifying any given prisoner as a convict; unless when it so happens that he is tried a second time at the same place. With regard to prisoners coming from a distance, it not seldom occurs, that even when they are known by the officers to have been previously convicted, yet the trouble and expense of identifying them prevents the prior conviction from being given in evidence; and thus they figure in the calendars and criminal returns as only once convicted.

The following answers which I gave in my evidence before the Transportation Committee will throw light on this part of the subject:—

‘1790. *Mr. Baines, Chairman.*—You stated, just now, that you considered that the good results of the system had been erroneously magnified; upon what ground do you make that assertion?—I think they have been erroneously magnified, because I think the statistics which have been given, that is to say, the percentage of persons enjoying tickets-of-leave who have been subsequently reconvicted, is a piece of statistics likely to lead to very erroneous inferences. It is said that the number of reconvictions does not amount to more than 8 per cent. of the number of convicts discharged on tickets-of-leave. Now, no doubt it is quite true that 8 per cent. of the convicts discharged on tickets-of-leave have been reconvicted, but I am by no means convinced that *only* 8 per cent. have been reconvicted; and it is quite clear that before that inference can be safely drawn, it must be known that ticket-of-leave men can always be identified. But from the observations which I have made, and the inquiries which I have made, I have come to a very strong opinion that not only are they not always identified, but that a vast number of them escape identification; and the

* *A Few Remarks on the Convict Question.* By Captain Walter Crofton, Chairman of Directors of Irish Convict Prisons. Dublin: Kelly. 1857.

probability is, that a very considerable number of ticket-of-leave men have been reconvicted who are not known to have been previously convicted, and who therefore stand in our tables as convicted for the first time. I will offer to the Committee, if they will permit me, some facts in proof of that conclusion. I have carefully questioned the heads of the police at Birmingham as to whether they have any means of identifying all the ticket-of-leave men in Birmingham; they assure me that they have not, and they have given me very strong proof that they have not. In the month of November of last year I asked them to make out a list of all the ticket-of-leave men in Birmingham, and to watch carefully their conduct for a certain time, and then to make to me a report. They did so. They thought it fair and reasonable to tell each person that his conduct would be watched; that he would not be interfered with if he were doing well, but that his conduct would be observed and noted down. At the end of six weeks they sent me a schedule, which I have before me, and by that schedule I found that there were 19 men whom they considered as ticket-of-leave men. Within the last few days I have received another report, in which they tell me they have discovered that five of those men were not ticket-of-leave men. Well, but 19 men for the town of Birmingham seems to be a very small number of licences. I observe that Colonel Jebb says that 198 ticket-of-leave men belong to Warwickshire; they have been sent to Warwickshire. I do not know how the assignment is made, but they are in his evidence assigned to Warwickshire. Birmingham has very nearly half the population of the whole county, and I have not only observed that fact, but I have ascertained the proportion of prisoners convicted at the sessions in Birmingham on the one hand, and in all the other parts of the county on the other; and without taking the Committee through the details of the calculation, which I can do if they wish, I find that there ought to be 80 ticket-of-leave men in Birmingham, whereas only 19 could be found, and of those, five turned out eventually to be not ticket-of-leave men. I then questioned the police upon that difference, and they tell me that they have reason to believe that there are at least 40 in Birmingham, but they cannot venture, with respect to more than those of whom they have given me the names, to state that they are ticket-of-leave men; but 40 would be only

half the number, according to the basis given by Colonel Jebb. Therefore, as far as the experience of Birmingham goes, I think I am justified in saying that there is sufficient difficulty in detecting a ticket-of-leave man, to make me pause before I accept the 8 per cent. as an accurate statement. I have also had the advantage of conferring with the Chief Superintendent of Bristol, and I find from him that there are 20 persons at Bristol who have been known as ticket-of-leave men. I do not find that they were all in Bristol at the same time, and therefore that would give as residents at any one moment at Bristol a smaller number; but I will suppose, for simplicity's sake, that they were all resident at the same time. I have made a similar calculation by a comparison of the population of Bristol and the whole population of England and Wales, and I find that there ought to be very nearly 40 ticket-of-leave men in Bristol, so that a similar result would follow.

' 1791. Is that calculation according to Colonel Jebb's statement?—No, not according to Colonel Jebb's proportion, which does not apply, because Bristol being a county of itself, I cannot compare it as I can Birmingham and Warwickshire; I therefore take the proportion thus: there are no ticket-of-leave men whose numbers come into the tables, but such as have tickets-of-leave in England or Wales. Then I take the population of England and Wales. I say, if the population of England and Wales give a certain number of ticket-of-leave men, the population of Bristol ought to give a certain other number, and that other number is about 40.

' 1792. *Mr. B. Denison.*—Did you mean that the 80 whom you thought ought to be in Birmingham were a portion of Colonel Jebb's 198, or your own calculation?—A portion of Colonel Jebb's 198: he allocates 198 to Warwickshire; then I take the number of prisoners belonging to Birmingham, and the number of prisoners belonging to Warwickshire; and I say, if Warwickshire have 198 belonging to it, then Warwickshire having a certain number of prisoners, and Birmingham having a certain number of prisoners, I get the terms of a proportion by which I find how many there ought to be at Birmingham.

' 1793. *Mr. K. Seymer.*—Then you proceed on the assumption that a ticket-of-leave man remains in the place to which he is consigned on his discharge?—I proceed on the assump-

tion that, if he is not there, some one from another part of the country comes to supply his place: and I think that that is a very fair presumption with regard to Birmingham and to Bristol, because Birmingham and Bristol form two of not more than 14 or 16 places in the United Kingdom of Great Britain and Ireland, which are large enough to furnish harbourage for bad characters; and the probability is, therefore, that every such town, instead of having less than its proportionate number, would have a larger proportion than that which arithmetic would give to it.

'1794. *Mr. Monckton Milnes*.—Would it seem to you probable that the police could trace out accurately the locality of these ticket-of-leave men with the very limited amount of surveillance which is at present exercised with regard to them?—I think not; but I hardly think that it is the want of surveillance which is the great evil. I think I can explain how the difficulty really arises, and it appears to me to be thus. For the purpose of clearness, I will compare our country with France. The criminal statistics of France, as the honourable member probably well knows, are very full and accurate; ours are anything but full, and I fear anything but accurate. In France they have had for many years a very perfect registration of births; the name of the new-born child is not only registered, but the names of his father and mother. It is therefore practically impossible to make any great use of *aliases* in France, and, in point of fact, I learn from Monsieur Demetz, with whom I have conversed very fully upon this subject, that there is no difficulty in identifying any person in France. If he is apprehended, they ask him who he is; if they have any doubt of the truth of his answer, they write to his place of birth; and if they find that he deceives them, they keep him in confinement, but do not put him upon his trial until they have ascertained who he really is. Having ascertained who he really is, they then write to Paris, where all the criminal statistics are drawn into a focus, and they learn what the French call his antecedents; that is to say, they know how many times he has been convicted, and probably a great deal more about him than the dry facts of his previous convictions. But in England, our system of registration of births has not been in operation for a suffi-

cient time to enable us to do that ; and, if it were so, we do not draw into a focus at present all the information respecting criminals all over England, so that it would not be possible by application at any one office, nor probably at any number of offices, to obtain the information which is given in France. In the absence of this power, which cannot be created all at once,—for the registers must have time to grow old, and Lord Brougham's Bill to establish a system of collecting and classifying judicial statistics must have time to be passed and worked upon—I have suggested, but the suggestion has not been adopted, this expedient.—Mr. Gardner, the ingenious and excellent governor of the Bristol gaol, has possessed himself of a photographic apparatus, with which he takes the likeness of every one of his prisoners who he has reason to believe is a person really embarked in crime as a calling. Now, he says he can produce copies for 6*d.* each. It is believed by the police that, with the exception of London, 14 copies would be all that would be required, to send them to the great resorts of criminals, namely, to towns which are likely to be visited by old offenders, who desire to hide themselves, and to go where they are not known. Several would be required, no doubt, for London ; say that 20 are required in all. Therefore, at an expense of 10*s.*, not for every prisoner, but every one of a class which is well known, and can be perfectly designated by the police, you would have multiplied the portraits of all these men, and thus you would baffle their *alias*, which is now very powerful, and they would be recognised as old offenders. I may add that I know, from cases which have come before me upon the bench, sessions after sessions, that long before the ticket-of-leave system came into operation, many veterans passed as being convicted for the first time. It is a troublesome matter to obtain the evidence of previous conviction when the offender comes from a distance. You must not only have the certificate of his previous conviction, but you must have a witness who will swear to his identity ; that is to say, one of the police of a distant town makes a long journey to come to swear that the prisoner at the bar is the man to whom the certificate applies.

‘ 1795. But would that extremely dangerous class to which you allude be a class likely to receive tickets-of-leave?—Yes,

indeed ; and at all events, if they did not, the system would be equally useful upon an absolute discharge.*

The following circular was largely distributed at the time it bears date :—

‘ PHOTOGRAPHY AS AN AID TO THE ADMINISTRATION OF
CRIMINAL JUSTICE.

‘ Her Majesty’s Gaol, Bristol, December, 1854.

‘ SIR,—The advantages which I have myself seen derived from the use of photography, as an aid to the administration of criminal justice, are such that I am induced to make an effort to procure its general adoption throughout the kingdom.

‘ The importance of being enabled, in the cases of all hardened criminals, to prove previous convictions must be too self-evident to dwell upon, neither does it require argument to show that the difficulties hitherto in the way of such proofs have been always numerous and often insurmountable.

‘ When the convict has been sent back for a second time to the same gaol, the required evidence has been easily procurable ; but it is well known to all who have been concerned in criminal administration, that the most cunning, the most skilled, and the most daring offenders are migratory in their habits ; that they do not locate themselves in a particular town or district, but extend their ravages to wherever there is the most open field for crime, or where the chances of plunder most present themselves. That this is the case will be attested by the police of almost every large city, whose experience will have failed to connect the most extensive and best planned robberies with their resident known thieves.

‘ A knowledge of the foregoing truths induced me, a few years ago, to desiderate some mode by which descriptions of committed prisoners suspected of previous convictions might be circulated among the governors of leading gaols, but numerous difficulties at first presented themselves. Periodical visits of inspection might be useful, but they would have two great disadvantages : first, they would withdraw the governor or

* Transportation Committee, House of Commons, 1856. Second Report, pp. 2, 3, 4.

confidential officer too frequently from his gaol duties; and, secondly, they would entail expenses which the counties could not bear; written descriptions in very marked cases might be effective, but, as in the great majority of instances it would be found impossible to make them sufficiently precise, they would only tend, where parties were sent to identify, to frequent disappointments and useless expense.

‘Photography then suggested itself to my mind, and it became at once apparent that if I could devise some means of making the operation sufficiently sudden, I might, in scores of cases, even without the knowledge of the prisoner, procure his likeness, a very icon of himself, of which, being capable of multiplication to any extent, I might transmit a copy to wherever it might promise to lead to useful results.

‘Twelve months’ continuous study of the system has enabled me to perfect it; I have now an apparatus in my gaol which I use daily. I have rendered it most subservient to the object for which it was designed, and through its use have brought to justice several hardened offenders, who, being unknown in my neighbourhood, would otherwise have escaped with inadequate punishment.

‘J. H. came into the Bristol gaol upon commitment for trial, a perfect stranger to me and my officers: he was well attired, but very illiterate; the state of his hands convinced me that he had not done any hard work, whilst the superiority of his apparel over his attainments led me to suspect that he was a practised thief. I forwarded his likeness to several places, and soon received information that he had been convicted in London and Dublin. The London officer, who recognised him by his portrait, was subpœnaed as a witness, picked him out from amongst thirty or forty other prisoners, and gave evidence on his trial in October last, which led the Recorder to sentence him to six years’ penal servitude.

‘J. D. came to the gaol wholly unknown: his person and manners induced me to suspect that it was not his first appearance in a place of confinement, and having made several copies of his portrait, I sent them round to the governors of different prisons. He was recognised as having been convicted at Wells; the necessary witness was subpœnaed, his former conviction proved, and he was sentenced to four years’ penal servitude.

‘I could mention several instances in which some most notorious thieves, strangers to this part, have been brought to proper punishment.

‘Such having been my own experience, I now appeal to the governors of other gaols to aid me in carrying out the system upon a broad and a national scale: the cost of an apparatus complete will not exceed ten pounds, and it may be worked at an expense of about five pounds per annum.

‘I have only to add my wish that you should bring this communication under the notice of your Visiting Justices, and to say, should the authorities of any district consider that I can help them by instructing their officers in the exercise of this most useful art, I shall be happy to do so.

‘I am, Sir, your obedient servant,

‘JAMES ANTHONY GARDNER, *Governor.*

‘To the Governor, H. M. Gaol.’

The reasons for not putting the police in possession of the names, descriptions, and portraits of discharged criminals is, that such knowledge might prevent the latter from obtaining employment. But there is no reason why the information should be made general through all the members of the police force.

Let it be confined, at least in the first instance, to the Chief Superintendent in each large town, to be used for the purpose of detecting any individual who, by his conduct, had drawn suspicion upon himself. If the police are properly instructed as to their duty of non-interference with individuals apparently well-conducted and engaged in any lawful occupation, they will, according to my experience, carry such instructions into effect with fidelity and sound discretion.

The list of ticket-of-leave men in Birmingham, referred to in my evidence, is as follows:—

Names.	Report.	By whom made, and when.
J. W. (good)	Is striving to gain an honest livelihood, and is not known to associate with bad characters.	Inspector Glossop, 23 January, 1856.
J. Y. (doubtful)	On his return to Birmingham he was seen in company with thieves; but	Sub-Inspector Tandy, 22 January, 1856.

Names.	Report.	By whom made, and when.
	upon being cautioned by the police, he has since been endeavouring to get his living by work, and has not been seen with his old associates.	
J. A. (good)	Is gaining his livelihood by work, and has not been seen in company of bad characters.	P. S. Dutton, 23 January, 1856.
J. R. (bad)	Has been keeping company of thieves since his return, although he goes to work. He kept a low lodging-house, which was the resort of bad characters, which he has now given up.	P. S. Manton, P. C. Kelly, 5 January, 1856.
T. W. (bad)	Went to work at Nottingham. He states that he came to Birmingham at the suggestion of the Nottingham police. He has always borne (since known to the Birmingham police) a bad character, and keeps company of thieves, and has again taken to thieving.	Inspector Glossop, Sub-Inspector Tandy, P. S. Manton, 16 January, 1856.
W. B. (bad)	Has returned to his old practices, and never goes to work.	Sub-Inspector Tandy, P. S. Dutton, P. C. Palmer, 5 January, 1856.
F. H. (good)	Is getting his living honestly by exhibiting a panorama.	P. S. Dutton, 23 January, 1856.
J. W., <i>alias</i> B. (bad)	Supposed to be employed as a bailiff; is seen in company of thieves.	Sub-Inspector Tandy, P. S. Manton, 23 January, 1856.
T. M. (doubtful)	Has been cautioned by the police for keeping company of thieves. His parents are well off, and are supporting him.	P. C. Palmer, 23 January, 1856.
C. B. (good)	Has been working for his living, and has not been seen in company of thieves since his return. He has now enlisted into the army.	P. C. Kelly, 23 January, 1856.
T. V. (good)	Went to work on his return, and has not since been seen in company of bad characters. He was a receiver of stolen goods previous to his apprehension.	P. C. Palmer, 23 January, 1856.
J. N. (good)	As in the case of T. V. (with the exception of being a known receiver). [Probably means that he is not a known receiver, like V.— <i>M. D. H.</i>]	
F. P. (good)	He is getting an honest livelihood, and has not been seen since his return in the company of bad characters.	P. C. Kelly, 23 January, 1856.
G. E. (good)	As in the case of F. P.	P. C. Palmer, 23 January, 1856.
J. W. (bad)	Has been in company of thieves since his liberation. He is now in Worcester Gaol for passing counterfeit coin. There is a case of felony against him at Birmingham, which will be gone into on the expiration of his imprisonment.	P. S. Manton, P. C. Kelly, 12 January, 1856.

Names.	Report.	By whom made, and when.
J. D. (bad)	Returned to Birmingham about two months. Has been since seen in company of thieves. He was cautioned by the police on the 5th instant, and has not been since seen.	Sub-Inspector Tandy, P. S. Dutton, 5 January, 1856.
R. S. (bad)	Keeps company of thieves; also a brothel. Cautioned on the 4th instant, when he said he did not care a damn for the authorities.	P. S. Dutton, P. C. Palmer, 4 January, 1856.
J. H. (bad)	Keeps company of thieves, and is following his old practices. Has been since in custody for felony. He is now card-sharping on the railway. He was transported from Chester, and it is not known whether he has a ticket-of-leave.	Sub-Inspector Tandy, P. S. Manton, 22 January, 1856.
S. H. (bad)	Came back October, 1854. He states that he burnt his ticket-of-leave in London. He was in custody on the 12th instant for felony, but was discharged, the evidence being insufficient. He was again apprehended on the 25th instant for having skeleton keys in his possession in the night, and committed to the next Borough Sessions.	P. C. Spokes, P. C. Claxton, 14 January, 1856.

(Signed) 'R. A. STEPHENS, Chief of Police.*

'Chief Office, Birmingham, 31 January, 1856.'

When I transmitted this list to the Home Office, I accompanied it with a letter to Sir George Grey, recommending him to withdraw the tickets-of-leave from such of the convicts as were marked 'Bad.' To this letter I received the following answer:—

'Whitehall, 26th February, 1856.

'SIR,—I am directed by Secretary Sir George Grey to acknowledge the receipt of your letter of the 1st instant, transmitting a police report, as to the conduct of nineteen licence-holders residing in Birmingham. In reply, I am to acquaint you that Sir George Grey does not consider that there is sufficient reason to revoke the licences of any of these convicts at present; but he has desired the Inspector of Police at Birmingham to warn those among them who are suspected of having returned to dishonest practices, that their conduct will

* Transportation Committee, House of Commons, 1856. Second Report, pp. 159-160.

be carefully watched, and that on the first occasion of any offence, however slight, being legally brought home to them, their licences will be cancelled, and they will be sent back to prison to undergo the remainder of their sentences. I am to add, that Sir George Grey has recently adopted the practice, in certain cases, of restricting the licences, so as to prevent the return of convicts to their former associates.

‘ I have, &c., &c.,

‘ H. WADDINGTON.*

‘ M. D. Hill, Esq., Q.C.’

Events have shown that a warning to licensees that their tickets should be withdrawn on proof of slight offences, although it may make them careful not to come under the animadversion of the law for trifles, is no safeguard against their committing the most fearful outrages.

In my Charge I claim for adults the benefit of reformatory treatment. This claim is making its way. A progress hopeful, if not quite satisfactory, may be observed by those who care to read the Reports of Inspectors of Prisons and the evidence given before Parliamentary Committees, in the application of reformatory discipline to adult as well as to juvenile prisoners; and much attention has been drawn to the necessity of not abandoning the prisoner, whether old or young, at that critical moment of his life—his discharge from confinement—when he again becomes his own master.

At the meeting referred to in the conclusion of my Charge, which was held on the 17th of October, 1856, I was called upon to move the first Resolution, which I did in the following Address:—

‘ I unite with you, my Lord Calthorpe, in regretting the absence of Lord Stanley; indeed I have personal reasons for my regret, because no man likes to become the subject of unfavourable comparisons. All, however, must lament the absence of a young nobleman who has already distinguished himself, not merely by the adoption of great social principles, but by the labour he devotes to informing himself thoroughly as to the facts and arguments bearing upon any cause which has the

* Transportation Committee, House of Commons. Second Report, p. 11.

benefit of his advocacy. I trust that the indisposition which has deprived us of the intellectual treat we anticipated, may be of short duration; and that the time may soon arrive when you will see before you a young man of whose future eminence his countrymen have not without reason formed the most sanguine expectations. I am reassured, however, to some extent, by the very admirable Report which we have just heard read—a statement which most materially abridges my task. In this Report facts have been presented in clear detail, which must have struck you all, first with the magnitude of the want to be supplied, and next with the humble hope that we are at last discovering the true way towards the diminution and repression of crime. It is, indeed, humiliating to all who are concerned in the administration of justice, that the labours of our judges, our magistrates, our juries, and our police,—all that machinery by which so many of our fellow-creatures are brought every month to the criminal bar—should only result in this; that after the convict has been found guilty, and punished according to law—after all that has been done for him by the exhortations of the chaplain—after all the lessons of the schoolmaster, and the still more important lesson derived from the pain which he endured from the consequences of his crime, when the doors of the prison are open, a vast proportion of those who have suffered for their crimes, straightway offer themselves again to run the same miserable course. How many thus fall back I cannot tell you. We have ascertained by careful examination that at least thirty-three per cent. of those who have been convicted once, come again and again to the criminal bar. But although we know that this thirty-three per cent. return to their criminal courses, we must recollect that the self-interest of relapsed convicts counselling them to suppress the fact of their previous conviction, many are not discovered to be old offenders; and you may, therefore, well believe that instead of this thirty-three per cent. probabilities point to a still more lamentable proportion.

‘ Well, then, what is to be done? I do not wonder that the masters and the manufacturers of this town express their astonishment that no such society as the one we stand forth to advocate has been before established in this place, because we are all aware, who know anything of the class—and who is there who knows

nothing?—that the moment of departure from the gaol is the most dangerous crisis in their lives. It is then, if ever, that the friendly hand should be stretched forth—that the friendly voice should be heard. The prisoner is then re-commencing his career; good and evil are before him. If the good be rendered hopeless, and his only home be the gaol appointed for his punishment; if the only friends who are not dangerous to his future prospects are the officers appointed to correct him; if he remember that when his character was unstained he could not keep his place in society, but forfeited his right to associate with honest men,—what despair must fall upon our poor wretched fellow-being when the door closes after him of that abode, which, gloomy as it is, was his sole refuge, and he finds himself shut out from the only true friends he perhaps ever possessed in the world! Well, then, you must be there; you have heard that the tempter is at the gaol-door—that the receiver of stolen goods dogs his steps—that his old companions in crime wait to carry him away to his former haunts, and to hurry him again into the fearful course from which he has been for a short time held back by the strong arm of the law. Do you disperse that wretched crowd assembled around the doors of the gaol, and hold out to him the hand of encouragement. If you can do nothing else, you can show him a friendly countenance. Let him feel that when he has to encounter, as he must, the frowns of the world, one human being at least will be his friend—will rejoice if he can resist temptation and escape its dangers, will mourn if he fall back into the paths of sin. I address myself now more particularly to a class of my fellow-townsmen whom I know well, and to whom I feel under great and permanent obligations, never by me to be repaid. It is probably known to many of those present that, during the seventeen years of my Recordership, I have adopted a plan which I learnt from the worthy and excellent magistrates of the Warwickshire Sessions; namely, that when there is reason to believe a young person at the bar is not utterly depraved—that he is there for his first, or nearly his first, offence—that there are those allied to him by the relationship of blood, or of friendship, willing to receive him, or that his employer would take him again into his service and give him shelter,—I have practised the lesson I learnt; and have delivered up such

young persons to these guardians, so that they might be admitted again into a family circle, and there might be hope of reformation from the example of those by whom they were surrounded. And let me say, and I tell it with gratitude, that, in the majority of instances, the friends who have received the youth just stamped with felony, are the very persons who have been the sufferers by the offence of which the young criminal has been convicted. How often has it happened to me to be addressed by a prosecutor with tears in his eyes, imploring that the young prisoner might be given up to him again for a further trial!—and when the Court has yielded to that entreaty, there has been a burst of grateful thanks for being allowed to assume the anxious responsibility of making a convicted felon a member of his household! Alas! I have felt, as I am sure you must feel, that thanks and gratitude were due from me to the benefactor, and not from him to me. I have kept an exact register of convicts so dealt with, and the individuals whose names are entered therein have been visited for the purpose of ascertaining the results of this lenity. In the course of these seventeen years, 483 persons have been so disposed of at the Birmingham Sessions. We have kept a watchful eye upon them, and the result has been that we have not been able to detect more than seventy-eight out of the whole number who have appeared again at the bar. Surely, here is a great benefit conferred on society. I will not waste a word upon pecuniary savings, however large. I would rather direct your attention to the moral gain to the community. Manifestly a great one has been achieved. Hundreds have been rescued from destruction; and to what classes of the community do we owe that good? Why, to the artisan, the small employer, the little shopkeeper; these are the classes, I would say, to whom is mainly due the great services which have been rendered to criminals and to society. Do not let it be supposed that I speak slightingly of those who are higher in the social scale. But it does so happen that masters who have under their management a large number of workpeople have felt, and perhaps rightly felt, that they are not in a position to undertake the responsibility of that constant watchfulness, which is necessary to preserve him who has once fallen from falling again. I therefore am far from making invidious comparisons;

but the fact still remains, that it is to the least wealthy portion of the middle classes of this town that the reclamation of so many of our criminal population is due. But that fact encourages me to ask them, as they have done good, to do more; and strange as it may appear, I know of no stronger hold over the human mind for benevolence, than that it has been benevolent on former occasions. Well, then, do you, my good friends of this class to which I have referred—do you step forward again. I know you will—I know you thoroughly. I was born among you—I was brought up among you—I have mingled with you—I have entered your dwellings—I have enjoyed your hospitality—I have learned much from my intercourse with you. I know and respect you—you are good fathers, good mothers, good sons, daughters, brothers, and sisters. And though it may be that you have but little of this world's wealth, you can do much which wealth cannot accomplish, to assist us in the great cause in which we are embarked. Money, indeed, I ask not from you. I know that you have more ways for your money, than you have money for your ways. But assist us with your hearts—assist us by giving your friendly countenance to these poor creatures. Such is the prevalence of crime, that it is scarcely possible for any person not to be allied by ties of blood, or friendship, or by acquaintance with some family in which there is a fallen member. I ask those of you who can do as much, to fix upon some individual, to watch his trial, to acquaint yourselves with the extent and duration of his punishment, and his conduct during the term of his imprisonment; to exhort him to apply himself humbly to the great task of self-reformation, and to provide for him if you are able a home and employment on his departure from prison. If you can do no more, attend on the morning of his release, forming, as it were, a body-guard against those tempters who infest the prison gates. You yourselves have been exposed to temptations, of which the noble Lords and Right Honorable Gentlemen present, may know nothing. You have triumphed over these temptations; and you will bear me out when I say that among the most fearful and irresistible of the catalogue are the 1500 public-houses, the 308 taverns, the 321 gin-shops, and the 871 beer-houses—the authorized temptations offered by the Legislature! I speak in the presence of members of both

Houses of Parliament, and will repeat my words—the fifteen hundred dens of temptation which you, the great men of the land, suffer to be opened in every quarter of the town, lest the repentant sinner should discover some obscure spot in which he may find safety. Whatever door is shut against him, the door of the public-house is open; of whatever offence he may be convicted, so long as he is not guilty of the crime of utter destitution, so long as he has the smallest of her Majesty's coins in his pocket, a welcome is ensured to him—a welcome, alas! far more disastrous than a repulse! Here, then, are the bitter fountains that feed the swelling torrent of crime! (cheers). I trust you will not suffer your kind feelings to evaporate in cheers; but that you will let them fructify into good acts. If so, you shall have your reward. You will not, it is true, be one penny the richer during the whole of your lives, for your sacrifices and exertions—you will, perhaps, gather no fame—your names may never extend beyond your native street—but you will have your ‘exceeding great reward’—the consciousness of doing right, of obeying the commands of your Divine Master—Him who spake the immortal words, ‘Do unto others as you would that others should do unto you.’’ The Recorder concluded by moving—‘That the plans and operations of the Birmingham Discharged Prisoners’ Aid Society, as detailed in the statements now read, be approved by the meeting.’

In answer to an observation in a leading article in the *Times*, alluding to a satirical attack upon the Meeting, which had appeared in that journal, I wrote the following letter:—

From the ‘Times’ of November 18th, 1856.

‘TO THE EDITOR OF THE ‘TIMES.’

‘SIR,—On Friday you published a ‘squib,’ from the pen of a correspondent, in ridicule of the Meeting, lately held at Birmingham, for promoting the objects of the Society established, a few months ago, in that town, for the relief and employment of discharged criminals. With him I have nothing to do, except to enjoy his vivacity, such as it is. A serious answer to a jest is always a mistake; giving it not infrequently

the point which its author had omitted to supply. It is yourself with whom I have to deal. You thus introduce the article to your readers:—‘The following squib, in which one of the morbid tendencies of the age is exposed, has been forwarded to us for publication.’ This opinion of yours gives weight to your correspondent’s feathers, and it induces me, as having, by accidental circumstances, been called upon to take a prominent part at that meeting, to ask for a little space in your columns to show, or attempt, at least, to show, that your rebuke is misapplied. That a disposition to shrink from the infliction of pain,—even where pain is necessary to the welfare both of him who has to suffer and of the community of which he is a member,—is one of the morbid tendencies of the age, cannot be denied by me without the most flagrant inconsistency; but I wish to be permitted to show that the objects of our Society, rightly understood and fairly ‘exposed,’ are no example of any such tendency; but, on the contrary, are both wholesome as regards the end in view, and are sought through means entirely unexceptionable.

‘The project originated with the principal officers of our Borough Gaol—the Governor, the Chaplain, the Surgeon, and the Matron, and it has the cordial support of the Heads of our Police.

‘These are precisely the individuals, it will not be denied, in whose minds idle sentiment must have been long ago extinguished by their familiarity with the criminal class. If the difficulties of reformation, the discouragements which must be encountered by all who embark in such an enterprise, the melancholy fact that, as regards a certain proportion of convicts, all efforts to make them better are thrown away—if these considerations have their due weight on any minds, it is impossible to believe that the ministers of punishment are not of the number. Depend upon it, the assistance which they propose to render will never go beyond the suggestions of common benevolence; and will be grounded on an intimate knowledge of the individual to be served, gathered from daily intercourse.

In the first place, they will interpose in favour of no discharged prisoner unless he has impressed them with the belief that he not only is inspired with a strong desire to do well, but possesses, to a considerable extent, the power of making his

conduct accord with his good intentions. Some of these founders, if not all, have long acted, within the scope of their private means, on the belief that, with regard to individual prisoners, if the difficulty of placing them in honest employment could be overcome, they would be able to maintain their position; and, encouraged by the successful result of these experiments, those who instituted them have naturally and meritoriously, as I must think, desired that the field of operations should be extended until it includes all on whom benevolence would not be wasted.

‘ Then, as to the assistance to be rendered, none can feel more acutely than the founders of the Society, and those who have gone to their aid, that the *minimum* of assistance, provided the object be accomplished, is, on all accounts, the true measure to be allotted. The practice of the Society has hitherto been exactly conformable with its theory. An agent is employed to find masters willing to afford the prisoner about to be discharged a fair trial. Hitherto the offers of employment have been equal to the numbers desiring to be employed, and the expenditure has consequently been very trifling.

‘ It is quite true that it is contemplated, in special cases, for the purpose of meeting special impediments, that a guarantee, to a small amount, should be offered to a hesitating employer. The suggestion, however, arises out of no theory on the subject. It is but a close imitation of a course pursued by Thomas Wright, of Manchester, who, for forty years, has applied his leisure, and no small proportion of his substance, in placing out discharged prisoners. Mr. Wright has frequently availed himself of the guarantee, as a means of accomplishing his object; and his report is, that his liabilities have rarely ended in loss. When it is known that, during this period, Thomas Wright was the foreman of an iron-foundry, labouring twelve hours a day, it may be thought that his leisure was not very abundant; and when it is further known that the income which he derived from his occupation was burthened with the maintenance of nineteen children, it may be concluded that the surplus was not of the magnitude to produce extensive results; yet the fact remains, that, single-handed, he has rescued a multitude of poor creatures from desperation, and gained them the opportunity, by which they eagerly profited, of abandoning for ever the paths of crime.

‘Is there anything Utopian in all this, or does the kindness shown to the poor outcast militate against the interests of society? Doubtless, if every door is to be shut against a discharged offender, the severity of his punishment would be enormously augmented, and it cannot be denied, in theory at least, that his fate would be a terror to evil-doers; and on this hypothesis it may be maintained that in aiding him to find an honest livelihood we are weakening the force of example. But many a theoretic truth is of no practical value, and this is one of that number.

‘I can and do appeal with the most absolute confidence to all whose avocations in life have made them acquainted with criminals, to support me in the assertion, that the value of the deterrent to which I have adverted is so infinitesimally small as to be incapable of appreciation.

‘On the other hand, the danger of turning these wretched beings into desperadoes is no shadowy peril. The evil is come upon us. We are crying out against it, and, taking counsel of our fears rather than of our good sense, we expend our strength in vociferous complaints, instead of concentrating our thoughts upon devising a sound remedy. In this state of mind we are apt to quarrel with all who try to help us, and the only chance of avoiding ridicule or censure is either to do nothing, or to swell the chorus of aimless reproach.

‘The obstacles to be overcome by a discharged prisoner, where punishment has produced its intended effect, and has created the desire to regain his place in society, you, yourself, describe in your leading article with a force which leaves nothing to be said. In casting on him the burden of honest maintenance, ‘we are,’ to use your own words, ‘setting a moral cripple to deal with a weight which a moral athlete could not lift.’ Why, then, not help him to raise this weight? If the assistance we afford is no greater than is sufficient for its purpose, I am utterly at a loss to divine what ‘morbid tendency’ is disclosed by our forming ourselves into the Association which has been made the object of attack.

‘To you it appears that, looking at discharged prisoners as a class, our task is hopeless; and I have already said that, on a large proportion, benevolence would be thrown away. Our answer has been given; we confine our attention to the individuals who

have impressed upon those most intimately acquainted with them a belief in their reformation.

‘That felons, as to whom no reasonable person can doubt that they will pass at once from the prison gate to the haunts of crime, should be poured forth upon the country, is an evil of appalling magnitude; but it is one for which we are not answerable. It is not we who thrust them out into destitution and villany—its sure consequence. Some of us have raised our voices for years against the system. Meantime, we seek to mitigate evils which it is beyond our strength to remove.

‘You think a return to transportation is the only remedy; and you are supported in this opinion by high authority—that of the two Committees, one of the House of Lords, the other of the House of Commons, appointed during the last Session to investigate the subject. For the present, however, transportation has come to an end. Even Western Australia, the sole colony which can be bribed to take our convicts, remonstrates against the manner in which we are dealing with her; and requires that we should keep our worst felons at home, and send to her shores only our minor offenders. Transportation to Western Australia is therefore quickly approaching its end; and if we are to find a new vent for our criminal population, it must be by founding a new colony. To discover a site for such a plantation is indeed a difficult problem. One Committee makes no attempt to solve it; the other, that of the House of Lords, is driven to recommend a district in the Gulf of Carpentaria, of which we know little, except that it is within the tropics; and that our sending convicts there would be viewed with great distrust by the neighbouring Australian settlements.

‘If, then, we are ever able to resume transportation, years must elapse before it will furnish us with the means of ridding ourselves of the multitude of prisoners who are annually convicted of transportable offences; and even then, unless all offences, great and small, are to be punished with transportation, a large class will still remain, who, when they are discharged, will require assistance to obtain employment, or they will become outcasts, passing from bad to worse—from simple theft to violence and murder. Remember, Sir, the murderer of Mr. Hollest, the clergyman, had, from the press of applicants, been refused admission to the Refuge at Westminster, although he

was willing to undergo the severe probation to which candidates for that privilege are very properly subjected. Put, then, the interest of the prisoner out of the question. Let it be held right that our sympathy for him should be lowered to the freezing point; ought not the honest part of society—the *true men*, as they had used to be called—ought not your correspondent himself to feel that we are serving them? That the benefit we confer is but small compared with our wishes none are so conscious as ourselves; but we are quite unaware that it is alloyed by any infusion of injurious matter, or that our humble endeavours are justly open to the imputations which I have felt it my duty to answer.

‘ I am, Sir, your obedient servant,

‘ M. D. HILL.

‘ Stapleton, November 15.’

INTRODUCTION TO CHARGE OF DECEMBER, 1856.

THE belief which I entertained when I delivered the preceding Charge, that the panic had passed away, never to return, was ill-founded. As the winter of 1856-7 drew on, many outrages were committed; and Assizes being very generally held throughout the country, public attention was drawn to the subject from day to day. It soon became apparent that the excitement which prevailed in the latter part of 1855 would be greatly exceeded. Almost every discharged convict was called a ticket-of-leave man, although his enlargement may have been absolute and unconditional; and many persons, who were only suspected of having been convicted, still fell under that appellation. The consequence was, that public censure became directed against the *manner* of discharge, viz., by ticket-of-leave, instead of the *fact* of discharging back unreformed criminals to pursue their old career. The public misapprehension, both as to the disease and as to its remedy, will scarcely be credible a few years hence.

 CHARGE OF DECEMBER, 1856.

GENTLEMEN OF THE GRAND JURY,

THE Calendar, you will be glad to learn, contains only 70 prisoners. Your task, therefore, will not be so burthensome as that which generally falls on Grand Juries at the present season. I wish I could infer from this brevity of the Calendar a diminution in crime. But I cannot. In truth, we owe this result to very different causes; among others, to an unusually short interval between the Michaelmas and the Winter Sessions. Indeed, Gentlemen, if we are to judge by the number of offences of which we hear and read, and by the impression on the minds of those around us, crime, instead of diminishing, has within the last few months rapidly increased. Whether a longer experience will tend to fortify this conclusion or to weaken it, is more than I can venture to predict. There are, however, causes in operation which may have led to exaggerated

inferences as regards the recent alleged extension of crime. These I will lay before you. All whose duties have made them conversant with the subject, know that the winter months of the year are more fertile in crime than the summer months. And again, that the offences which prevail during the long nights of winter are not mere abstractions of property, which, however annoying, create but little fear ; they are deeds of violence, spreading around a wide circle of alarm ; so that, in addition to the injury sustained by the immediate sufferer, the consciousness of security throughout a whole district is often destroyed by a single outrage ; while a series of such events disturbs the public mind from one end of the kingdom to the other.

It now and then occurs that a particular year will stand prominent for the number and the turpitude of such outrages. The year 1850 was one so distinguished. The attention of the inhabitants of Birmingham was drawn to this fact by a daring burglary in Great Hampton-street ; in the course of which the master of the house was attacked by the burglars, cruelly maltreated, and placed in imminent danger of his life. Heinous offences were rife throughout the country. In Kent the houses of ten clergymen were robbed during a single month. At Frimley, in Surrey, a clergyman was murdered in his bedroom by midnight assassins. Crime languished in the summer months of the following year ; but as winter approached it sprang up again, and dreadful scenes of violence were enacted. These alternations induced me some time afterwards to extract from the *Police Gazette* the numbers of outrages in each month for the two years between December, 1850, and December, 1852. This paper I will read to you :—

	1851.	1852.
January	20	18
February	8	10
March	8	14
April	6	9
May	7	8
June	4	5
July	3	3
August	3	4
September	8	0
October	10	4
November	13	8
December	19	8
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	109	91

Probably, Gentlemen, you will agree with me, after hearing this statement, that we must not hastily infer the permanent augmentation of crime from the experience of a few months. Or, even if an increase should be established, that its extent can be safely calculated by the number or the character of offences committed during a short period. Yet, that whether increasing or decreasing, or remaining stationary, the amount of crime is a subject which rightly fills the minds of reflecting men with humiliation and anxiety, cannot be denied. That our lives and our property may be secure from harm is our chief object in submitting to government, and in paying our heavy contributions towards its maintenance. Our advancement in science and art—the extension of our commerce—our widespread empire—our high place among the nations—all these achievements in their various degrees are the subject of honest pride; and within moderate bounds we may blamelessly indulge ourselves in contemplating our superiority. But how cruelly are we mortified when compelled to contrast these glorious triumphs of knowledge, enterprise, industry, and order—these testimonies of a higher civilization than has ever yet been reached in any age or country—with the contempt and defiance of that civilization, and all its potent and multifarious expedients for the vindication of its supremacy, hourly manifested by the hordes of brutal savages who throng our streets and highways, break into our houses, and violate the sacred repose of our sleeping families.

Thoughts like these, Gentlemen, have often taken possession of my mind when, after reading speeches in Parliament of great length and fervour on some personality, forgotten within a month, or an elaborate *critique* on a new opera, or, it may be, a minute account of some valuable invention, or a well-merited and long-sustained eulogy on some beautiful picture, or statue, or poem, the offspring of native genius, I have lighted on a brief and obscure paragraph, informing me in ten lines that in the heart of old England a peaceful dwelling has been stormed, and its inmates captured and cruelly treated at the hands of ruffian enemies, by whom the laws of war and their humanities are either unknown or despised! Forgive me, Gentlemen, if I am wrong, but I have not been able to resist the conviction that we all of us bend too much of our care on

what I may call the luxuries of society, unmindful of its necessities.

True it is that occasionally, as at the present moment, the public is seized with a spasmodic fit of energy for the suppression of crime; but as these paroxysms are unfavourable to calm reflection, it struggles for the wrong thing—it clamours for the justly discarded weapon of severity. And the gallows, which in the ordinary state of public feeling is barely tolerated, becomes an object of respect, approaching, in persons of excitable nerves, to the reverence with which the largest divisions of our Christian world regard the Cross. We forget, amidst this perturbation, that barbarous punishments have ever failed of their intended effect, even when screwed up to a pitch of ferocity exhausting the perverted ingenuity of the most hard-hearted of lawgivers to devise.

But, Gentlemen, seasons will take their course. Crime will slacken. Newer topics will attract attention, and the former distaste for harsh inflictions will regain its hold. I have watched for nearly forty years the progress of this disposition to lenity. It may be arrested, or may appear to be arrested, for a moment; but the indications are deceptive. So, Gentlemen, if you stand on the banks of a river when the tide is on the ebb, a wind blowing from its mouth will appear to change its current, and may cause you to believe that the waters have commenced their upward flow. But wait awhile, and you will perceive that the river still sinks, in spite of the direction taken by the waves upon the surface.

It will not, I am sure, be imagined by you, to whom my opinions on the subject are well known, having been frequently, too frequently, perhaps, repeated from this bench,—it will not be imagined that I differ from my countrymen in their feelings of dissatisfaction at the present treatment of criminals. The evil is too flagrant to be denied. Still, nothing is more useless than mere crimination. The true questions for us to consider are the causes and the remedy. And first as to the causes. At the head of these, Gentlemen, I must place that reluctance to visit crime with heavy infliction, of which I have spoken; a sentiment worthy of all respect in itself, as the exponent of qualities producing the very best effects in their softening influences upon our social intercourse. We feel their beneficent

operations in our family circle, among our friends, in the relations between the rich and the poor, and, indeed, wherever we are brought into communication with each other. But when applied to the question of punishment, the unrestrained indulgence of this amiable sentiment is fraught with great danger to the well-being of society and the permanent interests of the offender himself. That the prison-gate should open for the discharge of an unreformed criminal is a misfortune to all ; not only to the community, but to the prisoner. For what real happiness can accrue to him either in this world or in the world to come, from our surrendering him to the tyranny of his ungovernable appetites and his malevolent passions ? Yet, Gentlemen, this is what we do every day of the year. Every day, from the 1st of January to the 31st of December, are the officers of our gaols busied in thrusting forth on the unoffending people of England, men who, having been deprived of their liberty because they had used it in a manner inconsistent with the safety of their neighbours, are nevertheless restored to freedom, with the full knowledge of all concerned that they will at once return to their abandoned way of life.

Gentlemen, amid our complaints of this most injurious system, we ought to remember that it originates with ourselves. I state this truth fully and frankly, without meaning, however, to absolve from blame those who have the management of affairs. They are participators with us in the wrong, and must bear their own share of the reproach. But a share only, not the whole burden. Gentlemen, let us look back for a moment on the course of legislation which has been pursued now for many years past ; pursued, too, with scarcely a murmur of disapproval, either in or out of Parliament. After capital punishments had been limited in practice to wilful murder, and not always enforced even in cases of deliberate, cold-blooded assassination, after degrading inflictions like the pillory and public flogging had been abolished, after our gaols, formerly charnel-houses of pestilence, had become far more comfortable abodes than many an honest and industrious labourer is able to provide for his wife and children, after transportation was known to be a path oftentimes leading to high prosperity, the yearning for mild punishments was still unsatisfied. Take an instance. Up to the year 1849 simple larceny was punishable with

transportation; and within my experience it was a punishment freely administered for this offence. Gradually, however, it became resorted to less and less; by reason of the influence to which I have adverted. And in that year an Act was passed by which simple larceny, to whatever amount, was secured from all danger of transportation, the maximum of penalty being imprisonment with hard labour for two years. So that if the theft of gold from the carriages of the South Eastern Railway Company, which is now under investigation, should lead to conviction, none of the guilty parties, unless they happened to be in the Company's service at the date of the transaction, could receive a higher punishment than that which I have mentioned, although the property is said to have amounted to 12,000*l.* in value. But this is not all. The Act of 1849 still left larceny, after a former conviction for that offence, punishable with transportation. In the year 1853, however, the law was again modified; and at the present day no series of convictions for simple larceny, to whatever number it extends, can be so visited; penal servitude for ten years is the highest sentence which can be passed; and rarely, indeed, is such a penalty inflicted. But penal servitude to any extent, short of servitude for life, necessarily involves a return of the criminal to liberty in this country.

The measure of punishment applied to the higher offences, which is also inflicted on the relapsed criminal, regulates in due proportion that meted out to minor offenders. Thus, then, has the unreflecting tendency of public sentiment towards a mischievous leniency, gradually produced that abundance of short imprisonments, which inures our criminal classes to a most pernicious alternation of confinement and liberty—a detention too short to bring reformatory influences into full operation, even where there is time to initiate them; and a liberty only used to practise with increasing dexterity and circumspection, the arts which brought the offenders into gaol, and which will, sooner or later, bring them there again.

Here, then, is laid before our eyes the evil of our present condition—the discharge among us of unreformed criminals. Surely, then, all who give themselves the trouble of mastering the subject, must feel that what we ought to aim at is, to prevent criminals, once apprehended and convicted, from being

so placed as to have the power of offending again, until we have some proof that their dispositions and their habits are changed for the better. And if the discipline of the gaol should fail to produce its intended effect, then is it not unquestionably right that the seclusion of the prisoners should continue, even if it last for their lives?—such a result being the consequence of their obstinacy in resisting reformatory influences, or their utter inability to keep in subjection propensities incompatible with the public safety.

Ages ago this island was infested with wolves; a dire calamity, as all conversant with the history of those times well know. Gentlemen, what should we have thought of the sanity of our ancestors, if, after giving a reward for each wolf caught, they had, when a certain number of months or years had elapsed, opened the dens and restored their wolves to liberty. And yet I am sure you will feel that, as between wolves and burglars, the latter are by far the more dangerous beasts of prey.

The opinion involved in the remarks which I have just had the honour of submitting for your consideration, is gaining ground; though it may take different practical shapes in different minds. Persons, for whose knowledge and judgment I have unfeigned respect, turn their eyes towards a renewal of transportation as our best and most hopeful remedy. Gentlemen, we did not abandon transportation willingly, nor until after a struggle, which showed us that we could not continue it without shaking the allegiance of our colonies to the mother country. It is consequently admitted, that if transportation is to be renewed, it must be done by establishing new settlements; and it is not denied that, in so acting, we must forego what has always been held as the highest advantage derivable from this method of dealing with criminals, viz., that they become absorbed into the honest population of lands, in which the means of subsistence are more easily and surely acquired than at home: so that the proportion of relapses becomes greatly diminished. Gentlemen, I do not mean to engage you in the discussion of a complicated question, replete with difficulties. If the advocates of a return to transportation can find a suitable territory—a task, easy as it may appear to many, which has, nevertheless, baffled the research of able men, thoroughly conversant with the resources of our empire in all its regions—if they

should be able to control a convict population in any way, save by imprisonment, so as to preclude the recurrence of the multiplied crimes and the mysterious abominations, which would form the darkest page in our history, did not their very atrocity shield them from disclosure—if they should be able to devise the means by which the worst and most dangerous of the convicts can be prevented from gradually filtering down into the nearest states—whether our own possessions or those of the foreigner—then, Gentlemen, I, for one, though not unmindful of the many strong objections remaining behind, and of the enormous expense essential to such a project, will rejoice at that, as I should at almost any other solution of our most distressing problem—‘What shall we do with our criminals?’

But, Gentlemen, to send convicts thousands of miles, to remain in prison at the end of their voyage, does appear to me repugnant to the most obvious dictates of common sense; to say nothing of its being condemned by all authority. If the convicts cannot, with propriety, be scattered abroad, but must be congregated upon public works, in anticipation of the wants of future colonists, who, the moment they become strong enough, will deprive us of our *depôt* for our criminals, thus constructed at an enormous outlay, surely it would be far more expedient to keep them at home, labouring at public works on our own shores; especially when the absence of such works is a national disgrace. Gentlemen, are you aware that, during the last year, more than a thousand vessels were shipwrecked on the coast of the British Isles, involving the loss of many hundreds of precious lives? Of the vast destruction of property, I say but little; I cannot consent to urge it in the same breath with which I deplore the destruction of our fellow-creatures; many of them hard-working fathers, of numerous families maintained in comfort, but now, by the loss of their stay and support, plunged into destitution.

Gentlemen, while engaged in my profession at the bar, I had many opportunities of ascertaining the causes of calamities like these; and the conclusion at which I arrived is in perfect accordance with the views of nautical men. It is, that a large proportion of our shipwrecks arises from the infrequency of our Harbours of Refuge. Many of our convicts are, at this time, engaged in the construction of such a haven at the Isle of Portland; but years and years must elapse before that and all other

requisite undertakings of a similar kind are finished. Why, then, should we lose the produce of the labour of our criminals to bestow it on some non-existent community, which, when it comes into being, will repudiate all such aid? And as I am now on a question of pecuniary advantage, let me not forget to assure you, that whoever favours a return to transportation, on the ground of its alleged economy, has fallen into a grievous delusion. Let two items of expenditure on this head be laid before you. I find them in the Appendix to a Report of a Committee on Transportation, appointed during the last session by the House of Lords. It appears that, although transportation to Tasmania (or Van Diemen's Land as it was formerly called) has ceased for years, 4000 convicts yet remain there, at an annual cost to this country of 142,236*l.*, which amounts to 35*l.* per man. In Western Australia, soon, perhaps, to be closed against us, we have 2000 convicts, at an annual cost of 82,000*l.*, or 41*l.* per man!

But waiving all objections to the revival of transportation, pray, Gentlemen, let it be remembered that to plant a colony is to plant a tree; and that years of growth will be required before the sapling arrives at maturity. What it will then bear remains to be seen, whether sound fruit, or the apples of Sodom, filled with dust and ashes! At the best, we are contemplating a somewhat distant future; instead of endeavouring to meet a frightful existing evil with a prompt remedy. Let us look around us for a moment, and we shall find that with a few exceptions, too unimportant to be mentioned, ours is the only country in the world which resorts to transportation for the disposal of its criminals; and yet all who have travelled know many countries in Europe, and many States of the great Republic of North America, where life and property are at the least as well secured from murderers and thieves as in England. I will instance Bavaria. Having heard and read much of its prisons, especially those under the control of State Councillor Obermaier, I have, through the kindness of Sir John Millbanke, our Envoy at the Court of Munich, obtained from the Bavarian Minister of the Interior full information on the treatment of prisoners adopted in the dominions of his sovereign; and I find that a plan which I have for many years urged upon the public and the Legislature is there in actual operation.

Their prisons contain a class of offenders under sentence for an uncertain period, or in other words, to be detained until by good conduct they have worked their way back to liberty. But, Gentlemen, neither the Bavarians, nor, so far as I know, any other Continental nation, expect confirmed criminals to be reformed in three or four years; consequently they are imprisoned for a much longer period; advancing themselves, however, by progressive stages from treatment in which they are debarred from any indulgence, to a manner of living not destitute of considerable enjoyment. Again, when the day of discharge arrives prisoners are not, as in England, cast out upon the world with the alternative before them of starving or relapsing into crime, but they are sent each to his parish; and thence disposed of by one or other of the numerous societies for the aid of prisoners, with which that country abounds. In Birmingham, as you know, we are working hard to establish a similar institution. It is not creditable to the English people that such a work of humanity to these unhappy persons, and of safety to itself, remains to be done.

Why, Gentlemen, do we not condescend to take a lesson from our neighbours, who, not having exercised the privilege of sending their criminals to infest their dependencies, have always managed them at home as best they might?

But, without any change in the law, we might, as it now stands, at once greatly alleviate our condition. And this brings me to that word of fear, the *ticket-of-leave*. Now, the ticket-of-leave, as dealt with by the authorities, might just as well be a piece of blank paper. It purposes to hold the bearer to the liability of being sent back to prison if he shall associate with notoriously bad characters, or in any way fail to prove by his subsequent conduct that he is worthy of her Majesty's clemency. This is the *theory* of the plan. The *practice* is to indulge him in every species of misconduct, short of committing a new offence cognizable by the criminal law; when, of course, whether he had or had not a ticket-of-leave, he would be deprived of his liberty. That an instrument so dealt with becomes an absurdity, must be admitted; and if it had been made the subject of ridicule none could have been surprised, and no one ought to have been offended. But to make the document a grave subject of attack, as if it infected the holder

with a moral poison, is, according to my thinking, to emulate, and even to surpass, the absurdity of treating its provisions as idle words. Long before tickets-of-leave had ever been heard of, thousands of convicts, sentenced to transportation, had been set free at home, by unconditional discharge, on the expiration of half their sentence. Now they are set free, on the nominal conditions to which I have adverted, at a period somewhat, but very little, shorter. To the extent of this difference let it be conceded that the change of treatment is adverse to the public interest. On the other hand, it must, in justice to the authorities, be stated, that the encouragements to good conduct, while criminals are in confinement, are far better devised and more efficiently carried into operation, than heretofore ; and also, that they are in course of still further improvement, so that the chance of reformation, however small, is greater than in former days. On the whole, comparing the two regulations for the discharge of prisoners at home, I have no hesitation in stating my belief that the one now in force, though grievously defective, is a valuable improvement on that which it superseded.

The true evil to bear in mind, let me repeat it, is that, since the stoppage of transportation, our convicts are discharged at our own doors, keeping us in constant alarm ; whereas we formerly sent them to persecute our friends on the other side of the globe.

If, Gentlemen, in deference to popular ignorance, which has wrought a confusion of terms, we choose to alter the English language, and call every prisoner discharged at home a ticket-of-leave man, whether his liberation be absolute or revocable, so be it. The change of names will produce no effect on the thing itself ; and, as it has been well said, ‘ whether an unreformed ticket-of-leave man is dismissed with or without a ticket-of-leave, he still becomes an insufferable nuisance.’*

Very soon we shall practically feel the proof of this assertion. Next year the convicts adjudged to penal servitude will begin to be discharged, as having completed the periods of imprisonment to which they were sentenced ; and the stream once beginning to flow will never be dried up. In a few months, then, if I mistake not, we shall find ourselves no

* *Times.*

gainers by the absence of the ticket. Learning that their terms of confinement would not be shortened by good conduct, the penal-servitude-men have already, according to the evidence of the prison officers before the Transportation Committee, become lazy and mutinous; so that we may expect the ticket-of-leave men of the present day, to be reinforced by a body of criminals whom the gaol has made worse—much worse—than it found them.

I told you, Gentlemen, I could point out a course that could be taken at once; and which, if taken, would greatly alleviate our present condition with respect to convicts at large. The step I propose is simply to make the conditions endorsed on the ticket-of-leave, a *truth* instead of a *fiction*,—to carry into effect the following resolution of the Transportation Committee of the House of Commons:—

‘That to render this system of tickets-of-leave adapted both for the reformation of offenders and the interests of the public, the conditions endorsed upon the tickets-of-leave ought to be enforced more strictly than appears to have been hitherto the case.’

Many ticket-holders who are misconducting themselves are well known to the police; and these are probably the worst and most dangerous of their class. Many others by reason of no expedients having been adopted to enable the police to learn their names and to become acquainted with their persons, cannot be identified, and must therefore remain as if they had received a perfect and absolute discharge; an omission which the Committee, by another resolution, altogether disapproved, and recommended should be supplied in future, as I trust it will be. Still, much might be done to calm the agitation produced by the laxity with which the Act has been carried into effect, if even at this, the eleventh hour, the responsibilities which rest on the ticket-of-leave man were to be enforced to the full extent that existing circumstances permit. The proposed measure, however, is but a palliative; and I therefore trust that the next Session of Parliament will not be suffered to pass away without our witnessing a thorough revision of the whole system of our treatment of criminals.

SEQUEL.

THE state of public sentiment, resulting in the lenity on which I have commented in this and former Charges, is worthy of more consideration than writers have yet given to it. It appears to me to arise from that quickened sympathy with distress, which distinguishes—and honourably distinguishes—the present age. No feeling, however, requires more discipline to prevent it from becoming mischievous, than sympathy. Its present operation, as regards crime, is inconsistent and absurd. At first it is all with the sufferer; and the vials of wrath are emptied on the head of the malefactor, for whom no conceivable punishment is too appalling. But the injured party recovers from his wounds; or, if the offence be against his property, some time has elapsed since we heard of his loss, and the first impression having worn away from our own minds, we are rather disposed to think he should have forgotten it also. Meanwhile the offender has been convicted; his sufferings, having the advantage of novelty, engage our sympathies,—gradually detached from his victim,—and we shrink from the contemplation of the fate to which he is condemned. Thus we alternately invoke the visitations of severity and of mercy upon the same individual, for the same offence! All this is weak and foolish, and comes of our not keeping steadily in view the true end of punishment—the repression of crime. That we ought to administer pain with a scrupulous and sparing hand is a truth, and a solemn truth. But the use to which the convict's pain is to be applied is, after all, of more importance than its amount. Had experience justified the conclusion that simply penal inflictions sufficed, by the force of example, to deter would-be offenders, so as to reduce crime within narrow limits, true benevolence would urge us to add to the severity of our punishments until we reached the degree required for the most deterrent results;—benevolence to the community, to the class about to fall into crime, and, indeed, to the criminal himself. For the most grievous penalties,—capital punishment included,—are to be preferred to a life of crime;—preferred *for* the criminal, although it would be too much to expect it should be preferred *by* him.

But this delusion in favour of deterrents is a vision of the night; and it will sooner or later be dispelled. Now and then, after some revolting spectacle—such as that of the torturous execution of Damien for his attack on Louis XV.—the world has been so disturbed, that it has awaked for a moment to the truth; but it has soon laid its head again upon the pillow, and, like the author of the *Pilgrim's Progress*, it has pursued its dream. Whenever the time shall arrive that the public sees its duty and its interest too clearly to remain satisfied with letting its sympathies run to waste, excessive lenity will be avoided with almost as much care as excessive harshness; and for the same reason—because each is incompatible with the object to be attained—the repression of crime. I fear I repeat this phrase *ad nauseam*; but as Hotspur threatened to have a starling taught the word ‘Mortimer,’ to cry it in the ears of Bolingbroke, so have I felt that to obtain some means of repeating the phrase ‘Repression of Crime’ in the ears of my opponents, until it had securely fixed itself in their memory, was my only chance for protection against the reproach which I have so long endured, for substituting, as it has been alleged, the reformation of the criminal as the end to be sought, in place of the true end—the diminution of crime. I am not using the term *opponents* in a personal sense; indeed, it includes friends whom I highly respect. One of these, Mr. Dillon, although he has informed me that he declines controversy on the subject of the following letter, can have no wish to prevent my defence of my own views from receiving full publicity.

From the ‘Daily News’ of January 17th, 1857.

‘TREATMENT OF OUR DANGEROUS CRIMINALS.

‘To the Editor.

‘SIR,—It is with no small surprise that I read in your journal of to-day a letter from the pen of my valued friend, Mr. John Dillon, in which he declares that enormous evils have resulted, and are actually resulting from the doctrine, that, in the infliction of legal punishment, the protection of society and the prevention of crime are secondary objects to the reclaiming or benefiting the individual. Mr. Dillon, then, gravely entertains the notion that the law of England or its administrators, or both, sacrifice the great object of criminal jurisprudence—

namely, the diminution of crime to its lowest attainable amount, to their desire for the reformation of the offender. That such a cry has been raised against philanthropists, and that it has been adopted by speakers and writers who think more of rounding a period, or giving effect to a piece of declamation, than of arriving at the truth, it is impossible to deny; but Mr. Dillon is one of the last men whom I should have expected to be carried away by such groundless clamour. At the present day our punishments almost resolve themselves into imprisonment, usually accompanied by a sentence to hard labour. In average years, capital punishments actually executed are not, as compared with imprisonments, in a greater proportion than one to twelve thousand. Fines and whippings are also proportionally rare. Transportation, so long as it continues to be penal, is but a species of imprisonment with imposed labour.

‘I shall be therefore substantially correct, if I resolve all existing penalties into imprisonment with labour. That being done, the next point for inquiry is, what is the average length of the detention in each case? I believe, sir, you will very much exaggerate that length if you put it down at six months. Imprisonments, technically so called—that is to say, excluding penal servitude and the penal portion of transportation—would not approach half that term. I have seen it placed as low as six weeks. But what advocate of reformatory treatment believes it possible even fairly to initiate a reformation during a detention of a few months; to say nothing of perfecting it? Surely, then, our daily experience demonstrates the fallacy of supposing that the repression of crime is sacrificed to the reclamation of criminals. Who, indeed, are so persevering in their demands for extending the power of detention as the advocates of reformatory treatment?—aiming thereby to insure to the public that the convict shall either be reformed, or, in the event of that object failing, that he shall be incapacitated from injuring his neighbours by his detention being continued for his life (as some would have it); and with regard to those who shrink from carrying reformatory doctrines so far, even they ask for a very large increase in the measure of detention.

‘I will not remind Mr. Dillon that no single member of the reformatory School has ever denied that the reclaiming of offenders is a means to an end; and that if it can be proved to

be only attainable by the sacrifice of the end—*videlicet*, the diminution of crime, it must be abandoned. Nor will I insist upon what is, nevertheless, the fact, that they frequently preface their writings on the subject by a formal adhesion to this principle; in the hope (the forlorn hope, however,) of protecting themselves from misapprehension. On the present occasion I pass this by, because I find Mr. Dillon going far beyond the imputation of our entertaining such notions. He declares that our alleged theory is reduced to practice. Am I to conclude from his statement, that it is the reformed criminals who, in some way or other, have produced the outrages of which we all, reformers and terrorists, complain with one voice? This, although the logical conclusion, cannot be that which Mr. Dillon meant to convey. Does he, then, mean to adopt the words of Lady Macbeth—‘The attempt, and not the deed, confounds us’? Does he mean that if reformation had been actually produced there would have been no ground for complaint; but, does he intend to say, that under an erroneous belief that convicts had been reformed, they were discharged too soon? That many of them were discharged too soon, either for the public safety or their own permanent welfare, cannot be doubted; but that they were dismissed under the belief that their reformation had been ensured, is opposed to the avowal in Parliament of the minister who opened the gates of their gaol. ‘The reason,’ he says, ‘why a ticket-of-leave cannot be fairly regarded as a proof of reclamation is obvious. As long as he is in a prison, where he is denied the opportunity of getting drunk and of associating with those who might lead him into temptation, the convict is evidently so circumstanced as that it is impossible for him to afford us the means of arriving at a satisfactory conclusion as to whether his repentance is genuine or affected.’ These observations must not be understood as reflecting on the Home Secretary. His defence rests on grounds quite distinct from the points in controversy between Mr. Dillon and myself.

‘Colonel Montesinos, at Valencia in Spain, Captain Crofton, in Ireland, and the wardens of prisons in several of the United States, have overcome the difficulty to which Sir George Grey refers, by passing the convict through the intermediate stage, of which Lord Stanley spoke, in Mr. Dillon’s presence, at the Meeting of the Law Amendment Society on Monday night. But,

be this as it may, it cannot be maintained that our criminals have been discharged under any belief in their reformation ; and consequently it cannot be maintained that the principle of reformation has been tried. I am not content to urge that it has not had a fair trial—I say it has had no trial at all. Yet such is the vigour of the principle, that even the inchoate process to which I have adverted has, by the number of ticket-of-leave men who have been well-conducted since they left their prisons, afforded additional proof that we ought to persevere to the end.

‘ Sir, apart from measures which go to prevent those in danger of becoming criminals from falling into that class, and confining myself to the treatment of those who have fallen, I know but three ways of dealing with them. First, to eradicate the desire to do wrong by reformation ; second, to overpower the desire to do wrong by deterrents ; third, to incapacitate the criminal from doing wrong by imprisonment or death. These three expedients may be harmoniously combined, and if you aim at reformation—accepting the consequence of no reformation no discharge, or a discharge long deferred—all the expedients may be brought to bear on the same prisoner. While immured in a gaol, he is incapacitated from injuring the community. The gaol, with labour and the suspension of those indulgences which brought him there, acts as a deterrent ; while seclusion, labour, and privation, are essential conditions to success in producing reformation. Let me then suppose that each of these three expedients has its advocate, who has no faith in the other two. To each I would say—There is no reason why you should not act in concert. If one of them avowed himself a sceptic as to the efficiency of deterrents to prevent criminals from relapsing into their evil courses, while, on the other hand, he equally disbelieved in the possibility of reclaiming them, to him I should say—Why not try the experiment ? You will obtain by that means a longer period of incapacitation for the convict than by any other. Public soft-heartedness will not let you detain the criminal for a long term of years, unless you show, first, that you are aiming at some good to him, as well as to society ; and, second, that if he remain in prison beyond the term which has sufficed for his fellow-convicts to work out their freedom, it is his own fault ;—it is because he is in such a state of mind and of habits, that to send him forth into the world would be to

let loose a creature far more dangerous to the safety of others than if he were a beast of prey. To the believer in deterrents I would urge much the same arguments as I had used with the believer in incapacitation. You, I would say, seek to make the deterrent power of penal inflictions more adequate to the purpose of inspiring terror than it now is, by augmenting their severity. It is immaterial to you with what object the pain is inflicted; you have only to do with the amount of it. Now, therefore, it is to your interest to adopt a course which necessarily involves a longer imprisonment, harder labour, and harder fare, than the public would concede, except on the terms of giving the criminal a chance to turn his visitations into a boon (the highest he can receive) by becoming reformed. If you are right in your gloomy faith, so much the severer his punishment; and so much the greater the deterrent force of the example offered by his suffering. The advocate of reformatory treatment would require no convincing. He is well aware that no convict can be reclaimed by sugar-plums—that he must endure much pain, not inflicted, it is true, for pain's sake, in a vindictive spirit, or with a view to retribution or to expiation (whatever may be the meaning of that word, much used and little understood), but pain administered as necessary to the cure—pain administered on the principle which determines the surgeon to sentence his patient to an operation, and which guides his hand during its course—pain inflicted with a wise parsimony; not withheld when required for success, not lavished when the sufferer can be spared its agony.

‘ Sir, instead of reproaching those who put the reformation of the criminal above the repression of crime—a class of beings whom he will find it harder to discover than ghosts or witches—let my excellent friend use his talents and his influence, which I have seen with respect and admiration employed in many a good cause, to induce the public to keep their feelings in subjection to their reason. Let him denounce as refined selfishness the disposition to relieve the prisoner from pain, without knowing whether such lenity will prove a blessing or a curse. Let him make them understand that crying out for severe laws, and then labouring to defeat their execution, by making every case an exception to the rule, whether they are engaged in it as witnesses, jurymen, or friends to the culprit, or to his mother,

sister, or tenth cousin, or tenth cousin's 'slight acquaintance,' will not at all mend the matter. Harshness in the abstract is very consistent with a maudlin lenity in the concrete. I could disclose the names of men of talent actuated by the purest motives, who had prayed the Home Secretary to mitigate sentences to an extent quite ludicrous, if the error were not so pernicious; while the same philanthropists, when acting as grand jurors, have called on the Government to abolish tickets-of-leave! Sentiment—like fire—is a good servant, but a bad master.

'Yours, &c.,

'M. D. HILL.

'Stapleton, Bristol, January 15.'

Lord Stanley's speech, referred to in this letter, is as follows:—

'Debate on the means of freeing the country from dangerous Criminals, at a Meeting of the Society for Promoting the Amendment of the Law, January 12, 1857.'

* * * * *

'Lord Stanley said he might, perhaps, as Chairman, be allowed to make a few remarks. The debate had, practically, turned on the subject of transportation. That subject divided itself into two distinct questions: first, what they were to do with criminals while they were under punishment; secondly, what they were to do with them after their term of punishment had expired. As regarded the first of those questions, he believed there was a very general agreement amongst all who had well considered the matter, that while a criminal was actually undergoing his sentence it was in all respects more advantageous to detain him here than to send him abroad. Under the former arrangement, there was no possibility of the criminal mixing with the home population, because he was kept secluded; there were plenty of public works upon which he might be employed; they saved the expense of his passage; they had a more effective superintendence than could be obtained on the other side of the world, and, which was a consideration that ought not to be entirely neglected, there was a better climate here than in most places abroad where public works could be usefully executed.

'The real difficulty was met with when they came to consider the other question—what they were to do with those whose

strictly penal term had expired. It seemed to him that there were only three courses which could possibly be adopted. The first was, to send the criminals to colonies which were already occupied; the second, to found new colonies expressly for the purpose of receiving them; the third, to keep them in this country, with or without tickets-of-leave. As to the proposition, to send them to colonies which were already peopled, that was an expedient of which he altogether despaired. The colonists would not consent to receive criminals, and no sane man would entertain the idea of forcing them to do so. It was often said that there were particular settlements which would receive a few convicts. The reception of a few would not meet the difficulty; it would, at the utmost, only postpone for two or three years the adoption of the remedy which must be resorted to at last. Neither ought it to be forgotten, that there were wide differences between one class of convicts and another: so that even if West Australia, or any other colony, similarly situated, consented to receive a limited number of convicts, it was certain that those whom the Home Government would be most anxious to get rid of, the colony would be least willing to receive. There would be a constant struggle—Government insisting on sending out their worst felons, the colonists protesting against taking any except those who might be supposed to be most reclaimable. The alternative lay between founding a new colony for criminals and providing for them at home. As to the former, it was surrounded with difficulties. In the first place, it would be absolutely necessary to exclude free-settlers from any new penal colony. A new penal colony must be exclusively penal, otherwise the free settlers would gradually strengthen in influence till they became the majority, and prevented any further importation of criminals. Thus, in one supposed object of transportation, the dispersing of a few criminals among a population of innocent settlers, by whom their labours would be speedily and usefully absorbed,—the proposed scheme failed altogether. Even, however, if free settlers were excluded, a similar result would ultimately arise. The convicts who were sent out would have children—for, of course, women would be sent; and in thirty years there would be a new generation, consisting of persons who, being themselves innocent, would object to the importation of criminals as

strongly as settlers who had gone out from England. Besides, there was the practical question, where were they to find such a place of transportation as would be required? As to selecting a small South Sea island, that was out of the question. A large area would be required, for it would not be worth while to send out less than a very considerable number, and one, if not the principal, object of sending out criminals would be to put them in a place where there would be almost unlimited space for all. Three situations had been named—one, the northern part of Australia; another, Vancouver's Island; the third, Hudson's Bay.

‘Now, to every one of these locations there was some grave objections; as to North Australia, there was, in the first place, the certainty that, whatever the distance might be, the criminals who were confined there would, when allowed a certain degree of liberty, find their way sooner or later to the other Australian settlements. In the next place, it must be recollected that the whole of Northern Australia was between the tropics, and that the settlement of Port Essington, which was founded there, was given up because the climate was found to be unhealthy. In fact, all experience showed that in low-lying lands thus situated the European race degenerated, and its labour was unprofitable.

‘As to the Gulf of Carpentaria, its shores were all but unexplored, and it was impossible to say whether cultivation could be successfully carried on there. He did not attach much weight to reports made by commanders of naval exploring expeditions, who could have no knowledge beyond what might be gained by a hasty survey of the coast. Even between their accounts in this instance there was considerable discrepancy. But in such matters experience was the only test: and it could not be wise to incur the risk and cost of sending out a colony on a large scale without first ascertaining whether Englishmen could live and maintain themselves on the spot selected.

‘With regard to Vancouver's Island, he thought the neighbourhood of the Californian diggings, and the feelings of the inhabitants of the United States, were conclusive objections to its being chosen. The same objections did not, indeed, apply to Hudson's Bay; but there he believed it would be found that a subsistence was only to be obtained by hunting, the

climate offering insuperable objections to the keeping of stock and the cultivation of land. These considerations, as it seemed to him, disposed of all the localities which had been mentioned as available.

‘In this state of things the only alternative left to them so far as their penal knowledge extended, was to try and make the best of detention at home. On this subject he would remark, in the first place, that he did not think the ticket-of-leave system had yet had a fair trial, much less was responsible for the whole of the outrageous crimes which had been recently perpetrated. A large number of men had been discharged from the militia; regiments of the line which had returned home, on being reduced, had naturally got rid of some of their worst characters; and owing to those two causes, there was no doubt a larger criminal population than there would have been under other circumstances. But in the next place he did not think the principle on which the ticket-of-leave system was framed had been fairly carried out. As he understood that system, it was implied that the residence and occupation of every man having a ticket-of-leave should be known, so that if there were merely a strong suspicion that any such person was getting his living dishonestly, he should on that ground alone be called to account. Unless, then, the principle of the system were applied with much greater strictness than it had been, the system, so far from having had a fair trial, could not be said to have had a trial at all.

‘Now he would just point out one or two means by which he thought the existing evil might be alleviated. It struck him as a great misfortune that in their prison discipline there was no provision for an intermediate state between actual seclusion in prison and absolute freedom of life out of doors. The man who left prison was bewildered by the new state of things in which he found himself. If his term of confinement had been long, the feeling of freedom was strange to him; he was like a man coming out of a railway tunnel or a coal-pit into the dazzling sunshine. Moreover, the men who were the best behaved in prison were often the worst behaved out of prison—and for this reason, that they were the men who were most susceptible to any influences, whether good or bad, which were brought to bear upon them. The man who was docile

when subject to good influences was apt to show himself equally docile when placed in contact with his old companions. He thought, therefore, that one evil which required to be corrected was the sudden transition from a state of complete dependence—a state in which the choice between good and evil was hardly offered—to a state of unlimited liberty. He was also of opinion that more consideration ought to be given to the recommendation of Captain Maconochie, that the length of a man's imprisonment should be made to depend, to a certain extent, on his own diligence and good conduct, so that the stimulus of hope and fear might never be wanting.

‘Another question arose, namely, whether, taking into consideration the state of employment in this country, and the extreme difficulty of sending criminals abroad, it would not be practicable to provide continued employment for those who were willing to accept it on public works or otherwise, after their discharge from gaol. It was, he thought, a reproach to the state of the law that a ticket-of-leave man should be compelled to come before a police magistrate, as had been the case recently, and say,—‘What am I to do? No one will give me employment.’ It was easy to talk of the pressure of competition, and of injustice to the innocent labourer: but the notion of an invidious preference being given to criminals might be guarded against by making the rate of wages offered in such case purposely low, so that none would accept them who could find other employ. And, as convict emigration was discontinued, and as such employment of criminals at home must, however slightly, affect the market, it was open to consideration whether the slight injury thus done to the honest labourer might not be balanced by offering increased facilities to free emigrants.

‘He would conclude by saying that, though they did not pretend to see their way out of all these difficulties, they should at least warn the public against trying vain and fancied remedies. It was better to know that the problem remained unsolved, than to put trust in some imaginary solution which was sure to break down at last.’*

In addition to the sites for a penal colony enumerated by Lord Stanley, the eligibility of the Falkland Isles has been

* *The Law Amendment Journal*, January 15th, 1857.

insisted on. But the smallness of their area—not much larger than that of Devonshire—would make it impossible for them permanently to contain as a home any large number of discharged convicts; even if the fact that it is impossible to raise corn there, and very difficult to cultivate common vegetables, did not present insuperable objections to the project.

There is now a very general concurrence on two points:—
1st. That so long as it is right to keep a convict under restraint, confinement in this country is to be preferred to confinement elsewhere. 2nd. That the difficulty with regard to convicts begins to be felt on their discharge; because the burden with which they may load us when they again become their own masters, is vastly more onerous than their cost in prison. Each of these positions is susceptible of abundant proof. To convey convicts to a remote destination requires the use of hulks. Now, why hulks in motion should be deemed capable of better moral government than hulks at rest, I know not. On the contrary, withdrawn, as those in command are, from supervision, it is easy to suggest many reasons why their state should be worse during the voyage than when lying in our harbours. But, be that as it may, when the convicts have arrived at their destination, what assurance can we have that their treatment and their conduct while in confinement will not be what the labours of Sir William Molesworth and his colleagues proved them to be in times past?

It is not easy to procure trustworthy evidence as to the manner in which the almost despotic powers entrusted to officers having the charge of convicts abroad, are executed. Very few minds can withstand the injurious effects of irresponsible authority. Hence there is much difficulty in obtaining official testimony on the subject, on which unhesitating reliance can be placed. Officers and convicts stand in hostile relation to each other: the feelings of the officers are therefore engaged in favour of their own body; and facts, it may be surmised, will be suppressed, softened, and explained away. Testimony from among the convicts is obviously open to even graver suspicion. There is, however, one test which may be applied, namely this:—Are the facts related consistent with what we know of the tendencies of arbitrary power? There has lately been published a letter by the well-known John Frost, on this subject,

which I cannot but think deserves careful attention.* Frost was transported for a political offence, which left his character for veracity untouched. He is, however, what Johnson called a 'Good hater : ' and persons who deserve that eulogium, seem impelled to depict the acts of those to whom they are hostile in the darkest colours—thus first deceiving themselves, and then propagating the deception. There is, however, much verisimilitude in all Mr. Frost's statements. Many of his anecdotes relate to that well-known source of offence and consequent punishment, a rigorous exaction of minute observances, devised, no doubt, with the laudable intention of habituating the convicts to treat those placed over them with great respect. Offences which grow out of the neglect of these rules, multiply with a rapidity scarcely credible to minds which have never addressed themselves to that particular subject. The party to be offended is the officer, who becomes morbidly sensitive to disrespect, and most ingenious in discovering its indications. Of necessity he is almost always the only witness. He tells his story to those allied to him by the *esprit de corps*, and accusation and conviction follow each other with almost invariable certainty. Among the higher officers, the offended party is often, by a like necessity, not only accuser and witness, but judge. The state of chronic animosity in the minds of the convicts, produced by such a course of petty tyranny, is utterly opposed to all hope of reformation. Indeed, it can hardly fail to make them reckless of consequences, and overwhelm them with despair. I subjoin a few extracts from Frost's pamphlet, to which the reader will give such attention as he may think they deserve.

' There is something monstrously unjust in forming rules for the government of a set of men, and then punishing for an infraction of them, when it is impossible to retain the tenth part in the memory. When I was put into the office at Port Arthur, and made police clerk, it was part of my work to read over the code to the prisoners. When convicts came to Port Arthur they were brought to the office of the Commandant, and the code read over to them. There were at that time more

* *A Letter to the People of Great Britain and Ireland, on Transportation.* By John Frost. London: Holyoake and Co. Price 3d.

than one hundred and fifty distinct laws ; it took me from an hour and a quarter to an hour and a half to read them ; the far greater part the most absurd and brutal ; yet implicit submission was required, and a breach of them was always punished with great severity. There were many charges of this sort on the book :—‘ Breaking the settlement regulations, they having been read over to him on his arrival, twenty-five lashes ;’ ‘ thirty-six lashes ;’ *always bearing in mind the suffering and the degradation arising from a Port Arthur flogging.*

* * * * *

‘ Many thousands of prisoners were subject to these regulations. Hundreds were sent yearly to Port Arthur. They were taken to the office, and the regulations read over to them. It was impossible to observe them. Men were brought up to the office and charged with breaking the rules, and sentenced to be flogged ; no plea was admitted ; they were tied up to the triangle, and their backs cut to pieces by the infernal knout, as if they had committed the grossest moral offence ; *and yet these men were expected to be turned from the error of their ways by such proceedings !*

* * * * *

‘ A few days after, I was in the office watching with a good deal of attention the conduct of the Commandant. There were standing before him in the dock several miserable creatures, whom he was trying according to law. ‘ Call in that man,’ said the Commandant : ‘ call in that man.’ A young man was brought in and put into the dock ; here was a scene of a similar kind to that which I have just described. ‘ How did you dare to break my regulations and to treat me with contempt ?’ The man was so frightened that he could say nothing. ‘ Put that man into the cells, Mr. Newman,’ said the Commandant ; ‘ and, by heavens, if you do this again, I will give you a sound flogging.’ What had this young man done ? *Passed the office of the Commandant with his hand in his pocket !*

* * * * *

‘ One day a very intelligent man was brought to the office, and charged before Captain —— with breaking the settlement regulations, and insolence to one of the constables. The evidence of the constable was as follows :—‘ The gangs were going to church yesterday ; I observed the prisoner breaking the

settlement regulations, he was walking with his hand in his pocket. I went up to him, and asked him if he was not aware that he was transgressing by keeping his hand in his pocket? He laughed at me—yes, sir, he laughed at me.’ ‘What have you to say in answer to these charges?’ said the Commandant. ‘I plead guilty to the first charge,’ said the prisoner, ‘and not guilty to the second. I was walking to church with a hand in my pocket. The constable came up to me and asked me ‘if I were not aware that I was breaking the settlement regulations by keeping my hand in my pocket? But,’ said he, ‘I suppose your hand is cold, and you have put it into your pocket to warm it?’ ‘That is the fact,’ said I, ‘my hand is very cold, and I have put it into my pocket to warm it.’ He smiled at me and I smiled at him, and I did not expect that he would bring me before you on such a charge.’ ‘Do you think that this defence will serve you?’ said the Commandant. ‘It is not enough for you to set me at defiance; to treat me with disrespect; but you must insult my officer in the discharge of his duty? By heavens, I have a great mind to give you a sound flogging! Put this man in the cells, Mr. Newman, and leave him there till I give special orders to release him; and beware,’ addressing the prisoner, ‘that you are not brought before me again, for if you are I will give you cause to remember it.’ The prisoner would remain in the cells till, by permission, he would be brought before the Commandant, and then, in the most abject language, would he be obliged to acknowledge his offence, and promise to offend no more; and if in making this acknowledgment the Commandant perceived anything like a sense of injury, he would be sent back again, if no other punishment were inflicted.

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‘The surgeon at Port Arthur brought a charge against a prisoner, then confined in the cells, ‘for disrespectful language.’ The evidence, as it stands on the book, is as follows:—‘I went to the cell where the prisoner was confined, I called him, he answered very disrespectfully, ‘what do you want.’’ ‘What have you to say to this charge?’ said the Commandant. ‘When the surgeon came to the cell door I was asleep; I heard a voice, but I did not hear what was said; the cells are so dark that I could not distinguish the person who spoke, and thinking that

it was the constable, I asked him what he wanted. I did not know that it was the surgeon who spoke to me ; if I have offended, I am very sorry for it.' One would think that this defence, which the surgeon knew to be true, would have been satisfactory. It produced no favourable impression on the surgeon or the Commandant ; the man was sentenced to receive thirty-six lashes, and the surgeon was present when the punishment was inflicted, and, from my knowledge of the man, I will venture to say that the lash was laid on unsparingly.

' One day while I was in the office at Port Arthur an old man was brought up from the cells, where he had been placed by the orders of the Commandant for trial. The charge was made by the Commandant for using to him disrespectful language, he being accuser, witness, and judge. ' How did you dare,' said the Commandant, ' to answer me yesterday so disrespectfully ?' ' I did not see you yesterday,' said the prisoner. ' Not see me !' said Captain ——. ' Did I not speak to you as I was passing your place of work ; and did you not very disrespectfully ask ' what do you say ?' ' ' I did not know,' said the old man, ' that it was you who spoke to me : I am, sir, as you can see, nearly blind ; I should not know you at this distance, for I can scarcely see you ; besides, sir, I am nearly deaf. I heard some one speak to me yesterday, I thought it was one of the gang, and not understanding, I asked what he said ; I can assure you that I was not aware that it was you who spoke to me.' One would think that this defence, and the miserable appearance of the old man, who was a charcoal burner, would have satisfied any one possessing the least particle of humanity ; a very old man nearly blind and deaf. All these and the defence excited no feelings of a favourable kind in Captain ——. His vanity had been wounded ; he sent the old man back again to the cells, there to remain till his pitiful spirit would be softened by the sufferings of the offending party.'

These are the lighter charges brought by the Author against the administration of convict government in Tasmania. The others, although judging from the past, and also considering the arguments *à priori* which may be adduced in support of their probability they ought not to be disregarded, are nevertheless too grave to be circulated, unless upon testimony freer from exception than that on which they stand at present.

Still no one can doubt that the tendencies to abuse in the government of all men who are not free—whether convicts or slaves—are so great, that assiduous watchfulness from without is essential to keep them at all in check. At home we have vigilant eyes to seek information, the press rapidly to diffuse it, and an irresistible force of public opinion to give immediate effect to the dictates of humanity. But when the evil is removed to a distance, the operation of these powers is always weakened and embarrassed—not seldom entirely defeated.

From the 'Spectator' of January 3rd, 1857.

‘WHERE SHALL WE PUT OUR FELONS?’

‘If the prevalence of violent and predacious crimes excites that hysterical alarm which breaks out in the cry of ‘gallows,’ what will be the state of feeling when the prisoners sentenced to short periods of penal servitude are let loose upon us? That system began in 1853, so that the first detachment will be coming out in 1857. Already the revulsion has created one of those periodical paroxysms of ‘severity,’ which, as Mr. M. D. Hill says, cause the gallows to be venerated as an instrument of redemption, almost as much as ‘the cross.’ The panic fit is a reaction on the habitual ‘yearning for mild sentences’ into which the people of this country have been persuaded by philanthropists. Forgery, stealing, and many other offences, were punished by hanging, until the philanthropists and utilitarians abolished the practice; ‘severity’ was succeeded by a merciful ‘leniency;’ and when extraneous circumstances compelled Ministers to abandon convict transportation, the notion of leniency suggested that the more disagreeable state of close imprisonment in this crowded land must be shorter than a sentence of ‘transportation,’ with the pleasures of going abroad to work, and all the contingent opportunities of trade in the towns or free life among the bush-rangers. We are about to feel the consequence of that ‘leniency’ in a grand recruitment of our certificated criminals; and we may well press the alarming question—What to do with our felons?’

‘One process would be the shortest of all—it would be to go back to the old principle of action and kill them. No place of safety so secure as the grave; no example so impressive

as the gallows; no eradication of the vicious element in society so complete as extinction. The criminals are becoming too many for control: extirpate them, and they will neither accumulate, propagate, nor pervert. We fear, however, that 'the age,' whose opinions some people assert so confidently, is scarcely prepared for that capital operation; so the next step is to send the criminals out of the way. Simple exile would be the easiest mode; but civilized nations object to being colonized by aliens, more especially by felons; and the Channel Islands are the only states permitted to keep up the practice of felon exile. Pack them off, then, to 'some colony;' or if the very Colonies mutinously object, make a penal settlement where there are no free colonists—select 'some island.' We pass aside for the moment the absolute impossibility of reviving the Norfolk Island atrocities: before a Government could do that, it would have perforce to re-study the evidence of 1837, and the subsequent history of the Australias, and would then discover the impracticability of any such dream as renewal of transportation. But even if the convicts were 'transported,' unless it were for life, they must at some time or other *return*. Transportation, therefore, would not meet Mr. Hill's requirement, of preventing criminals, once detected and caught, from returning to prey upon society.

'That is the practical want. It has always been felt, but felt doubly since the number of the criminal class has become excessive; while the increase of wealth has increased the temptations to violence, and the development of peaceful habits has made self-defence more distasteful to the quiet citizen. The difficulty is not new. We talk about exposure to the assaults and depredations of ticket-of-leave men, as if it were quite a new invention; whereas we have only given a new name to an old thing. Those who are now so called promiscuously, are not ticket-of-leave men in ninety-seven cases out of a hundred. They are nothing more nor less than returned convicts and discharged prisoners,—a class whom we must always have among us under any system of limited sentences. No doubt, the ticket-of-leave men, accurately so called, are a bad variety; although they are an official importation. How did they come among us? When transportation was abolished on grounds of colonial policy, and it became necessary to consider how we

should deal with the felon multitude left on our hands, certain prison-reformers suggested various expedients for diminishing the force of that army; and among these, a detention of the worst classes of convicts until they should have undergone some test of their being less dangerous. The tests may be imperfect; the possibility of really reforming hardened rogues may be doubted; but at all events, the general proposition tended to keep off the weight of a considerable portion, and that the worst portion, of the felony. As a part of the process, the reformers suggested conditional pardons, revocable on a return to old practices. We have as yet had no completely developed machinery for carrying out this system; we have no auxiliary 'Sociétés de Patronage,' such as are to be found in Bavaria and other Continental countries, aiding the discharged prisoner to find that employment which respectable society refuses to him; our highest prison-governors have been avowed opponents of the system intrusted to their administration; the very legislation has been crude, faltering, and 'lenient.' When conditional pardons were suggested, the slow official mind naturally associated the words with the only concrete form of such a thing which it knew. In Australia, convicts were allowed to go at large with a 'ticket-of-leave'—and many of them did go at large, seeking whom they might devour, a terror to the honest settlers. The real intent of the proposed correctional discipline and tentative release was not understood, and it has never been adopted; but *that* colonial abuse was imported; and our towns can tell whether they like the import. An unreformed man out with ticket-of-leave, indeed, is no worse than an unreformed man discharged at the expiry of his sentence; and a conditional pardon, deferred for seven or ten years, or more, would manifestly be a relief in lieu of absolute discharge in four or five years. These varieties, whether of name or nature, signify comparatively little. Speaking broadly, it may be said that most of our worst culprits have been led into their worst courses by degrees: most of the convict men have been pick-pockets and thieves when lads, and have been punished; and the great class of adult criminals consists of *discharged prisoners*.

'The question is, how to diminish that class—how to draw it off—to convert it into a class of *not* discharged prisoners. We cannot, in the present state of opinion, kill it off. We

cannot transport it to the Colonies. If we carry it to 'some island,' we still only imprison it; and the further the prison the greater the cost, the fewer the transports to it, the worse the surveillance. If it be a prison, it were best nearer home. If the men are once immured, it is desirable to make the prison less costly—in some degree self-supporting. And as so many human creatures are upon our hands, it is reasonable to ask if we cannot convert them to some use—if we cannot employ them, for the health of body and soul—if we cannot perhaps redeem a few. That is not the *object* of public punishment; but when the culprits are in our keeping, common humanity and the simplest Christian feeling forbid the exclusion of that secondary object.

'The more so since, on reflection, rather formidable questions arise as to our *own* relation to the criminals. Are they an alien class of devils, simply our enemies, or are they not our fellow-creatures? Did any man ever inspect a large number of prisoners without noting that the general run is cursed at birth with some deficiency of faculties? See the low heads, the rude features, the strangely-deformed countenances! The strongest objection to this view lies in another yet more momentous reflection: what are *we*, the non-criminal class, that we can speak so absolutely of those wretched outcasts? 'Let him that is without sin cast the first stone.' Are all the John Dean Pauls, the Sadleirs, the Redpaths, detected? How many of them are among us, the 'innocent,' who are clamouring for 'protection?' There is one class of criminals more dangerous than those out on ticket-of-leave, and that consists of the *unarraigned* criminals. This is a delicate part of the subject to be discussed, but it cannot be overlooked. How can the respectable 'London Scoundrels'* cry aloud for treadmill and gallows, when culprits as hardened and as bold as any in Coldbath Fields are at large—when offenders as notorious are not only unscathed, but the very highest in the land are winking and conniving at their being let off? These cases are not roundly stated in print; they are not the less notorious; they are known to the Maninis, the Pauls, and Agars,

* The signature of a correspondent in the *Times* who, during the panic in the winter of 1856-7, clamoured for increased severity of punishment, and scouted all attempts at the reformation of criminals —*M. D. H.*

of prison society; and wonderfully is the moral lesson inverted, when the sufferers by gallows and treadmill see their accomplices on the Bench and in Parliament, and know that the 'crime' of the humble is humanely treated as the 'disease' of the lordly or the 'honourable.'

From the 'Birmingham Journal' of January 14th, 1857 :—

'A VISIT FROM BUSHRANGERS IN TASMANIA.

'The following extract is from the letter of a lady, resident near Hobart Town, Tasmania, to a relation in England. The trustworthiness of the writer is beyond all doubt. It is dated July 13th, 1856. To our mind the narrative fully justifies the indisposition of the colonists to receive the scum of our criminal population :—

'A large party of young people were on a visit to Mr. Lord, of Avoca, invited for the sheep-shearing. They had been making merry with dancing and music over night, and the grand doings were to begin next morning. It was summer. Mr. Lord rose at five, and was surprised that he did not hear any of the men stirring. Just as he finished dressing, and was about putting the guard of his watch over his head, the chamber door opened, and a good-looking sort of man, well dressed, too, stepped in, saying, 'Oh, Mr. Lord, I'll save you the trouble of doing that. Give me your watch.' Mr. L. saw that resistance would be worse than useless, and gave it up. The stranger, who was the notorious Dalton, turning to Mrs. Lord, who was in bed with the baby, asked for her watch. Now it so happened that she had three in her possession at the time, one her own, one her daughter's, and one belonging to some one else. She said, foolishly, 'I haven't one.' 'Oh, very well,' said Dalton, 'take your choice; either give me what you have, or I will blow your brains out;' at the same time presenting a pistol at her head. Of course she gave up what she had, and he ransacked the room for anything else he liked to have. He then said to Mrs. Lord, 'Get up.' Mr. Lord said, 'Not while you are in the room.' 'Ah, well, I don't mind that much; I'll stand outside the door.' I suppose Mr. Lord went out with him, for he placed an accomplice at the chamber-door to watch that Mrs. L. did not escape, and was proceeding to open the next door on the landing, when Mr. Lord said, 'Stop, there are

some young ladies in that room, who are my visitors, and under my protection, as well as my own daughter. I will not allow you to go in there.' 'Well,' said Dalton, 'tell them to get up then.' Mr. Lord went in and told them to do so, of course explaining to them who the strangers were. Now I must explain that among these girls were two sisters, E—— and M—— A—— ——. Their father is in the office of Royal Engineers. The elder had a choice assortment of jewellery, and, I think, showed her presence of mind in disposing of it. The morning before she had accidentally torn an opening in one of the seams of her dress; into this, between the dress and lining, she put her watch and chain, planning, as her dress was long, to hold it up at that part lest the watch should chink against the floor. Her purse she put in a slipper shoe, and kicked it under two beds until it touched the wall. Bracelets and other ornaments she threw into the fire-place, which they took care to fill with curl-papers and any rubbish they could find. I did not hear much about the others at this part of the affair, as they are strangers to us. Dalton was impatient long before they were ready or willing to leave the room. Miss —— forgot that in her little desk she had a choice bracelet. . . . At last they must come out, and Dalton marshalled them down stairs, forbidding a word to be spoken. He led them into the large dining-room, where the men and the young Mr. Lords were all ranged on one side, pinioned. He fetched Mr. and Mrs. Lord—the guests were allowed seats. Dalton said if they were quiet he would not tie them. He and his companion then proceeded to ransack the house, and in the young ladies' room broke open the little desk, took the bracelet and anything else of value about the room, but never guessed the treasures of the fire-place and slipper. They then returned to their prisoners, and said if they behaved well they would give them a good breakfast, which they did, though only fear of giving offence to these desperadoes would induce any one to eat. The men were untied for the meal, and everything went on quietly until one whispered something to his neighbour. The tremendous burst of passion this excited in Dalton, the threat with a pistol at the head to blow his brains out that instant if a sound were uttered, and the awful language, so paralysed the young ladies that M—— A—— slid off her chair and crouched near the piano;

others disappeared from their seats; all were afraid of the shots, and terrified at the violent language. While all this had been going on, the constables at the next police station, looking out towards Mr. Lord's, which was on a rising ground, were surprised not to see any stir about the place. One said, 'Why, I thought there were to be such early doings with the shearing! I'll get the glass and examine through it.' He did so, but not a creature was to be seen. 'Depend upon it, there's something up,' (quite a colonial phrase); 'I'll go and see about it.' 'And I'll go with you,' said a young man who was returning from the Diggings with 40*l.* in his pocket, and had slept at the station on his way from Launceston to Hobart Town. Ah! the poor constable little thought he should never come back alive, and the young man that he should become penniless. Just after the disturbance at the breakfast, Kelly, Dalton's accomplice, gave him a signal that some one was approaching; he went to the door and met the constable, who accosted him by name. Dalton told him if he moved a limb he was a dead man. Whether he stirred or not cannot now be known. In another instant those within heard a shot, and poor Buckley's brains were scattered on the pavement. His companion was relieved of the contents of his pocket, pinioned, and brought in. Dalton then ordered young Mr. Lord to pick out three of the best horses. He and Kelly then mounted, each taking one maid servant on the horse with him, it is supposed, to protect them from the shots which might have followed their departure. The third horse was, I believe, to carry stores. They sent the women back at half a mile from the house. The property they made off with was of considerable value, and was never recovered. The two were taken a few months afterwards, and lodged in the gaol at Launceston, but managed to effect their escape, much to the scandal of the authorities at that side of the island. Kelly was retaken in Melbourne; and now I want to tell how cleverly a young draper managed the capture of Dalton, when another day would have seen him safe off in one of the ocean steamers. His person and features had been very fully described, when it was known he had escaped to Melbourne, and everybody was on the look-out for him. One evening just at dusk, though lights were put up in the shops, he went into one, and requested change for a 20*l.* note. The shopman

instantly recognised him, but took no notice, only saying he didn't know, 'it would ask his master. To the latter he divulged his thoughts, and begged permission to manage the capture. His master consenting, the young man took his hat, and returning to the apparent stranger, said they could not change the note, but if the gentleman would permit him, he thought he could take him where he could get it done. The stranger thanked him, and the young man led him at a quick pace through back streets and byeways until they came to the back of the police-office. Through the gate or door into the yard at the back they passed; here was the critical moment; you may suppose the young man did not loiter; he ran up the steps, closely followed by the unsuspecting stranger, who in the gloom of night and closely shut-up windows failed to recognise what he had only seen perhaps the front of, and by daylight, too. In they went. Still the appearance of the clerks at the separate desks might make it pass for a merchant's counting-house. The young man explained the nature of their errand, giving the officers time to bend all eyes on the stranger. It seemed but a moment ere the cry of 'Dalton!' and the rush to secure him, took place. The convict was fearfully armed with revolvers, pistols, and knife. He said to the young man, 'Ah! if I had only suspected your purpose as we came up the steps, I would have shattered your head to pieces—blown it to atoms!' He was brought over here, and both he and Kelly were executed at Launceston. The last of such terrors of whom we have heard is 'Dido,' (of course a false name,) but murder could not be proved against him, as there were no witnesses to the fact, though a labourer heard the shot, and believes it was 'Dido' whom he saw. The felon is sent down to Port Arthur, on Tasmania's peninsula, where I hope he may remain.''

The writer of this narrative is known to me, and I have great confidence in the truth and accuracy of her statements. As may be well imagined, it is by no means a rare or isolated event which is described.

While dwelling on the evils which result from the discharge of dangerous criminals in a thickly-inhabited country, we sometimes forget how much more to be dreaded these wretches are by a district thinly populated; and how one or two ruffians may fill a large territory with dismay. Let us rather bear our

own burdens than cast them on our countrymen and their descendants, of whose welfare we ought to be as tender as of our own; and who should never feel the superiority of our strength, but as exercised for their protection!

From the 'Daily News' of December 31st, 1856.

'The Charge of the Recorder of Birmingham on the transportation and ticket-of-leave question is an able and statesman-like address. Mr. Hill, while ignoring neither the errors of the past nor the difficulties of the future, thinks it his duty rather to allay than to aggravate the panic of the present. He seasonably reminds us that before our colonies had refused to take our convicts, before transportation had ceased to be a punishment applicable to the great bulk of our more serious offenders, crimes of violence, attended with every circumstance of outrage and bloodthirstiness, were certainly not less frequent in given years (such as 1850, the year of the Frimley murders), than they are at present. He does not, however, attempt to make a case as against the present panic-mongers out of such a fact as this. The point is not whether serious crime is or is not more frequent in 1856 than it has been in any given year before the comparative cessation of transportation, but whether it is not now far more frequent than it ought to be—far more frequent than under a better system it might be. There can be no earthly doubt that it is. Whether serious crimes of violence have progressively increased since the year 1853, and are still progressively increasing, may possibly be a question; but there can be no question that they ought to be, and that they may be, diminished.

'That society has a right to claim from Government protection for person and property by the adoption of the wisest and best practicable measures for the repression of attacks on either, is one of the most elementary propositions in the whole range of social and political science. If in the exercise of this repressive power Government can combine the two ends, of reclaiming the convict and protecting society, it is well; but if not, there cannot be a moment's hesitation as to which of the two objects is to be sacrificed. The security of the persons and properties of those who have not violated the laws is the primary object—

the reformation of the transgressors of the law is but secondary. At any other time the enunciation of truisms like these would be a solemn impertinence, but in these days of morbid sympathy with the violators of law and enemies of order, it is absolutely necessary to record a plain and emphatic protest against being suspected for a moment of participating in the weaknesses of a sentimental philanthropy. Let us repeat it once more—the protection of society is the main end; the reclamation of the convict is a secondary end. And the practical problem is, now that our colonies won't take our convicts, how to deal with them so as to secure the former end, without absolutely losing sight of the latter.

‘ Send them abroad—get rid of them from our shores—ship them off or shovel them away somewhere or somehow—is the cry of the panic-mongers. Let us concede at once that if the extermination of the convict part of our population by process of law were the object sought, it might to some extent be attained in this fashion. A fleet of transports might be fitted out, capable of holding all the present inmates (some 9000 in number) of our public-works prisons. This floating cargo of crime might be discharged, with or without a month's provision, on any spot sufficiently remote, roomy, and secure,—and there left to its own devices. This is the simplest form of the notion of transportation as it now suggests itself to the more rabid victims of the garrotte panic. It is liable to several trifling objections, which may all be passed over in favour of this somewhat conclusive one—that it would be at once far more inhuman and far less effective than hanging, nothing being more certain than that the convict thus transported must, in the course of a very short space of time, either perish or escape.

‘ The next form of transportation that has been suggested in some quarters is really almost as absurd as the last—this is the plan of sending your convict some thousand miles beyond seas, in order to shut him up under due watch and ward in some island prison, with a proper staff of officials, and a humane supply of necessaries, either for the residue of his life, or for a lengthened term of years. Why all this needless cost merely for the sake of keeping the man in safe custody? Alter your laws, lengthen your periods of incarceration—and four prison

walls, or a proper guard of soldiers, on any Essex marsh or Yorkshire moor, would quite as well answer the purpose of keeping the felon during the term of his sentence apart from all contact with the world. It is at the end of the penal term that the real difficulty begins, and this difficulty will be just as great in the case of a man released from Tahiti as in the case of his fellow-convict let loose from Dartmoor. The difficulty is not to keep in safe custody, but to employ when the custody is at an end. At this moment Bermuda and Gibraltar are public-works prisons beyond the seas, but no one who knows anything of the subject will venture to assert that the convict discharged from Bermuda or Gibraltar is at all more reformed, or at all more likely to find employment on his return to this country, than the convict discharged from Portland or Portsmouth. In fact, if there be any difference, it is in favour of the home prisons, which, as a general rule, are better managed than those more remote from the surveillance of the central authorities.

‘The next, and at present the most popular, notion of transportation is that which involves the creation of a new penal settlement on the grand scale—a place, that is, beyond seas, where there is no settled or colonial population (for of such it is admitted on all hands we have no hope of availing ourselves); but where a large establishment must be set on foot, a great apparatus of penal discipline inaugurated, and where, at all events for a considerable period of time, the bulk, if not the whole, of the European population must consist of officials and male convicts. That we *can* found such a settlement is beyond a doubt. Where to do it may be a difficult question, but that somewhere or other it *may* be done, if we choose to spend enough upon it, admits of no question at all. As yet, indeed, the advocates of the scheme are all at issue amongst themselves as to the locality of the suggested settlement. One gentleman proposes Vancouver’s Island; another ‘authority,’ after conclusively disposing of that notable site by the objections of its extreme distance from this country and its close proximity to the gold fields of California, strongly urges upon the attention of a Legislature at a loss for a convict settlement the superior advantages of Hudson’s Bay.

‘It is difficult to see how absurdity can go much further than in thus representing as a proper field for convict reclamation

a land of barren and inhospitable wastes, cut-off from all maritime access to the rest of the world for many months of the year by the rigours of an Arctic winter. Mr. Howitt—who seems to consider that the mission of England is to sow the earth broadcast with penal settlements, which, as fast as they ripen into colonies, are to shed the husk of their origin, and refuse to employ the labour which created them—has advanced the notion that the temptation offered by white slave labour to intending emigrants is sufficient, after the first rough works of road-making and forest-clearing have been accomplished, to overcome very considerable disadvantages of climate and situation. But does any one suppose that the British Siberia of Hudson's Bay could, by any amount of preliminary road-making, or by any extent of convict population, really be brought into competition, as a field for emigration, with the wheat-waving plains of Canada? Even assuming that in the course of years this might be the case, what in the meantime would be the position of the convict settlement? There would be an almost exclusively male population of superintending officials and superintended convicts, to the number perhaps of from ten to fifteen thousand. We know what once resulted from this state of things; we know what must result from any second experiment of the same kind. The abominations of Norfolk Island and Tasmania are literally unutterable—they are safe from mention by reason of their loathsomeness, as the skunk is safe from capture by reason of his stink.

‘But even supposing that, in order to quiet the fears of an excited public, we were ready to risk a repetition of these atrocities, is it quite so clear that we should not be lavishing a vast amount of treasure and wasting a great deal of available labour, for a purpose that might be attained equally well at less cost of both? Transportation in this form is desperately expensive. A Tasmanian convict costs 35*l.* a year; a West Australian convict, 41*l.* At Dartmoor or Portland they could be kept for 25*l.* On the ‘London Scoundrel’ theory, indeed, all this expense is so much waste that might be saved by the summary process of hanging. It is sufficient to say that the British public has not yet been carried by the garrotte panic back to the hanging point; and the convict, who out of prison costs the community in depredations about 200*l.* a year, must

still cost the State, while in prison, about an eighth of that sum for his custody and support. It is a miserable burden, doubtless, but somehow or other it must be borne. The thing to remember is that it will press more heavily on the taxpayer of this country, if the convict is sent abroad, than if he is kept at home. That is the first point. The second is, that the taxpayer of this country derives no benefit from all the road-making and forest-felling which are the fruits of the convict's labour in the colony; whereas, they already derive some, and might derive much more, benefit from his labour here. On this point we agree with the Recorder of Birmingham. We would rather see convict labour employed here on works which no private capitalist could afford to undertake, but which might fairly be undertaken by Government on the principle of getting as much return as possible for the necessary expense of maintaining the convict. This is work in which convict labour cannot improperly interfere with free labour, for it is work on which free labour would never be employed. Of such work there is abundance in this country. There are harbours of refuge to be made, bogs to be drained, marshes to be reclaimed, sewerage works to be executed; why not employ for the direct benefit of the English public the convict labour which either here or elsewhere the English public has to pay for, and elsewhere at a higher rate than here?

‘Surely these are points to be considered before rushing wildly upon the notion of founding at all costs a new penal settlement. Extend your terms of imprisonment—classify your prisoners—employ them on useful public works—enable those who are corrigible to emigrate to the colonies with funds earned by their own extra labour—but do not, before you have tried these things, embark on the costly and doubtful enterprise of creating a new penal settlement, under the vague impression that you are laying the foundation of a new colony.’

CHARGE OF MARCH, 1857.

GENTLEMEN OF THE GRAND JURY,

THE Executive Government, at the commencement of the Session which terminated a few days ago, introduced a Bill for amending what is commonly called the Ticket-of-Leave Act; and although this bill was withdrawn in consequence of the intended dissolution of Parliament, yet it has been officially announced that it will be introduced again when the Houses reassemble. Permit me then to address to you, and through you to a larger audience, such observations as have occurred to me on the Bill itself, and on the speech of Sir George Grey bringing it before the House of Commons—that speech disclosing the principles by which the Home Office will be guided in the administration of the new law. The treatment of criminals, Gentlemen, is a subject which does not admit of its details being regulated by the inflexible rules of an Act of Parliament. Consequently a large discretion must be vested in the Ministers of the Crown; and it becomes quite as important to ascertain in what manner they propose to exercise that discretion, as it is to consider the alterations which are now to be made in the law itself.

But, first in order, let me invite your attention to the proposed amendments in the Act. This Act, which passed in 1853, created an equivalent punishment in lieu of transportation, called penal servitude; consisting in imprisonment with hard labour, either at home, or in certain colonies of the Crown—as Gibraltar and Bermuda. But as the new punishment was deemed more severe than that which it replaced, the old terms of transportation were in almost every instance considerably shortened. These equivalents being established, the punishment of transportation, in all cases in which the law did not authorize its infliction for a period of fourteen years at the least, was repealed. The novelty to which I have directed your attention is not, however, the characteristic feature of the Act. That consists in the authority conferred upon the Crown to grant a licence to

convicts to go at large before the expiration of their sentences—such licences, or tickets-of-leave, however, to be revocable at will; the convict not being entitled to any notice that his licence is about to be withdrawn, to any information as to the grounds upon which it is recalled, or to any opportunity of rebutting the charges which may have led to this forfeiture of his liberty. Such, Gentlemen, is the law as it stands at present. But it is proposed to obliterate the legal distinction between transportation and penal servitude, to consolidate both punishments—leaving it to the discretion of the Home Office in each particular case to determine whether the convict shall be imprisoned or transported—to assimilate the sentences as to length (with one exception) to those formerly appropriated to transportation, and to affix upon this consolidated punishment the designation of Penal Servitude. Such are the changes in the law to be effected by the Bill.

Let me now put you in possession of the course to be pursued in administering the amended Act. Tickets-of-leave are not to be abolished. In one sense, indeed, they are to be extended. Hitherto they have not been granted to convicts sentenced to penal servitude. The Government, however, yielding to the opinion of a Committee of the House of Commons, appointed last year to inquire into the provisions and operations of the Act now to be amended—which opinion was in accordance with that of judges, of directors of convict prisons, of chaplains, and of other persons practically acquainted with the treatment of criminals—have so framed the Bill as to make the present distinction, regarding the grant of licences, between convicts adjudged to transportation and convicts adjudged to penal servitude, as impracticable in fact, as it has always been alien both to the spirit and the letter of the law. In another sense, however, tickets-of-leave are to be restricted. Henceforward they will only be granted sparingly, and not until three-fourths, or at the least two-thirds, of the sentence are expired. The result will be to increase the average length of detention, as regards all convicts belonging to the classes hitherto sentenced either to transportation or to penal servitude. Transportation is to be continued so far as circumstances will permit; but with this important difference: the convicts to be sent abroad are to be such only as it is reasonable to suppose may become

useful citizens of the colony which receives them. 'There are some persons,' says the Right Honourable Secretary, 'who commit crimes of such atrocity that they are unfit to be at large, or are guilty of such gross misconduct in prison, that they come under the denomination of incorrigible. This class has no claim to any indulgence, and ought not to be either discharged here, or to be inflicted upon a colony. They almost belong to the class of criminal lunatics, who have committed some great crime, for which they are confined for life—not as a punishment for an offence for which they are not responsible, but to secure society against the consequences of their being at large.'*

This recognition, by a Minister speaking the sentiments of the whole Cabinet, of the justice of abstaining from either transporting to our colonies our most dangerous convicts—permitted to live—or from discharging them into our population at home, indicates an epoch in the advancement of true knowledge, as respects the treatment of criminals, which cannot be too distinctly marked.

Gentlemen, you have now before you the whole scheme of improvement, whether in the law or its administration, proposed by the Government for the cure or alleviation of the existing evils. Let me ask you to accompany me in a calm and dispassionate review of this project.

It is manifest that the Government were neither disturbed nor misled by the panic which so lately prevailed. They had the advantage of information, to which the public had no access, protecting them against the alarm which had overborne the good sense of so many among us. From figures placed by Sir George Grey before the House, it appears that the number of commitments in the year 1855 was 103,013, whereas in 1856 it had fallen to 97,100. It is, nevertheless, true that, although the total number of offences had diminished, yet, as Sir George Grey informs us, there had been a considerable increase in certain descriptions of crime, especially in those attended with violence, and he specifies burglary. But, he says, 'it is also worthy of note that the crime of robbery, including, as it does, garrotting, * * * has slightly decreased in 1856, as compared with

* *Hansard's Debates*, Vol. cxliv. Third Series, p. 377.

1855.* When the official Tables are published, we shall know what has been the precise augmentation in commitments for crimes attended with violence. It is a very important point, and I cannot but regret that the exact numbers were not mentioned. Sir George Grey thus accounts for such increase:—
‘The year 1856 was that in which the militia were disbanded, and the regular army considerably reduced; and although the majority of the soldiers who served the country abroad were doubtless well-conducted men, yet when a large body of persons from the ranks of the army were thrown again into civil life, as the commanding officers, on making the reductions of regiments, were always instructed to discharge the men of bad character, you could not be surprised if that reduction were followed by some addition to crime, wholly irrespective of the discharge of prisoners with tickets-of-leave.’† Gentlemen, I am inclined to give weight to this circumstance as explaining a considerable portion of the increase in crimes of outrage, whatever that increase may prove to be. Among offenders apprehended of late, and brought to justice, the names of persons discharged from the militia and other military forces are to be discovered. Moreover, you will find that the disbanding of troops has uniformly been followed by similar consequences. In tables compiled by Sir Stephen Theodore Janssen, an Alderman of London, which comprise the period from 1749 to 1771, it may be seen that a return to peace was regularly followed by an augmentation in the Calendar of the Old Bailey, as respects crimes perpetrated with violence. And in his remarks upon his tables, the compiler adverts to this coincidence as a well-known fact.

But, although there has been no sufficient cause for panic, since no sudden augmentation of a permanent nature has occurred, yet there has been, there is, and there long will be, cause for deep and growing anxiety. Each year, since the stoppage of transportation, has witnessed a more numerous discharge of felons among us, than its predecessor. While, therefore, there is nothing which ought to shake our constancy of mind, there is much which calls upon us to keep our thoughts

* *Hansard's Debates*, Vol. cxliv. Third Series, p. 366.

† *Ibid.* p. 365.

bent on the incontrovertible truth, that the restoration of unreformed criminals to liberty, is the one great evil to be redressed. That they do go forth from the gaol unreformed, whether with tickets-of-leave or without, is notorious. But if the fact required verification, Sir George Grey might be cited as a witness to prove it:—‘The minimum term,’ he says, ‘fixed by these regulations for the discharge with tickets-of-leave of men sentenced to seven years’ transportation, was three years; and of those sentenced to ten years was four years. I say the minimum term, because it was distinctly understood that if a prisoner did not conduct himself well, whether in separate confinement or at the public works, he should have no claim to a discharge at the end of the three or the four years, but might be detained for a longer period. It is a remarkable fact, however, and one which shows how very imperfect is the test of good conduct as a condition of the release of the convict, that the vast majority of the prisoners discharged with tickets-of-leave under those regulations—and I believe the regulations have been honestly acted on by the prison authorities—have been discharged at the minimum term. But the test of good conduct in prison is necessarily imperfect. The mere fact of a man’s good conduct when he is removed from the ordinary temptations of life, placed in an unnatural position, and required to conform to prison rules, to be industrious in the occupation assigned to him, and to be respectful to his superiors, affords no proof of actual improvement of character, or of moral reformation.’* And again, in a subsequent passage, he says:—‘There is an erroneous impression that a ticket-of-leave is a certificate of good character, and that those men only obtain it who can prove that they are reformed. There was never a more fallacious idea. It is very desirable that the illusion should be dispelled that the holder of a ticket-of-leave is ascertained to be less likely to relapse into crime than any other discharged criminal.’†

Two inferences must be drawn from these discouraging statements. First, that prison discipline, as at present conducted, is grievously inadequate to its purpose,—namely, to ensure good conduct when the convict returns to society. That

* *Hansard’s Debates*, Vol. cxliv. Third Series, p. 359.

† *Ibid.* p. 378.

his demeanour in prison should be so influenced as to make him what is called a good prisoner, is not without its value; and, although it furnishes no test of reformation, it is, as Sir George Grey observes, sometimes followed by permanent good effects. 'I believe,' he says, 'it is possible, I hope it is probable, and even that it often actually happens, that the habits of regularity, cleanliness, and decorum acquired in the prison, exercise a salutary influence on the convict's subsequent life. But until he is again subjected to temptation, there is no means of determining whether his good conduct in prison was not the result of the compulsion imposed upon him, or even of his desire to obtain his freedom as soon as possible, with a view to enable him to return to his former life of crime.'* It is quite plain that Sir George Grey is dissatisfied, and justly dissatisfied, with what has hitherto been accomplished by prison training. But it is also clear, and this is the second inference to be drawn from his remarks, that he is hopeless for the future. He points out very accurately the blot in our existing discipline; but he assumes it to be an irremediable defect.

Gentlemen, it is disheartening to find the Minister entertaining such a gloomy doctrine, as that science is utterly incompetent so to regulate the training of criminals, as to bring them into a state in which there is a reasonable probability that they will use their recovered freedom in a manner not inconsistent with the public welfare. If, however, this vital object be really unattainable, I think we have a claim to such a demonstration of the melancholy truth as will assure us that, in folding our hands in despair, we are not abandoning a great social duty, but simply yielding to a fate which cannot be averted. Gentlemen, the report of the Committee, to whose labours I have already called your attention, and to which Sir George Grey often refers, contains evidence drawn from various parts of the world, Spain, Bavaria, and—last, but not least,—Ireland, in direct conflict with that supposed impossibility. I will not, Gentlemen, do Sir George Grey the injustice of believing him to be less anxious than we are to overcome this obstacle. The office which he fills must, day by day, press the subject upon his mind and heart. He cannot have admitted

* *Hansard's Debates*, Vol. cxliv. Third Series, p. 359.

such a creed as that which appears to have gained possession of him, without fighting his way backwards step by step ; succumbing only to an overwhelming array of facts and arguments. Why not then tell us the story of his defeat ? Why not show that in so good and great a cause no difficulty was left unassailed, no expedient untried ? Are the alleged victories of Montesinos, of Obermaier, and the experiments so full of promise, of Crofton—Sir George Grey's own officer—are these mere illusions ? If they are deceptions, let them be exposed ; for it is most unreasonable to imagine that passing them over in contemptuous silence, will induce the public to discard them as the dreams of visionaries. Certainly there is nothing wild or Utopian in their principles. Indeed, they appear so obvious to common sense, that we cannot but wonder how it was possible to neglect them, from the moment when the reformation of prisoners was first attempted.

The problem (I scarcely need to enunciate it) is so to train the prisoner as to endow him with the faculty of resisting temptation. Gentlemen, to acquire this faculty, the danger of his doing wrong must be encountered. Let the prisoner be gradually and discreetly inured to the trial, while we have him under control. Let us observe how he passes through the series of tests to which he will be exposed ; and which are to be carefully graduated to his increasing power to support them. Let us do this before we abandon all control over him—before sending him forth, as we do now, from a state in which he can exercise no will of his own, to one in which he is released from all restraint.

This is in a few words the theory, by the application of which the difficulty has been overcome, wherever the experiment has been made with adequate skill, zeal, and perseverance. Far be it from me to pronounce the task one of easy fulfilment. But if not beyond the scope of human faculties it ought to be, and must be, performed. Justice to ourselves as a nation, humanity to our erring brethren, and obedience to the commands of our Divine Master—these irresistible motives urge us onwards, and forbid us to falter.

Gentlemen, we are told that tickets-of-leave are to be more sparingly distributed than they have hitherto been. This announcement you may perhaps be glad to hear. Up to a late

period they have been attainable by all convicts adjudged to transportation, the moment a certain proportion of their sentence had expired ; unless their conduct in confinement had been blameworthy—so blameworthy indeed that instances of detention on that ground are extremely rare. But on what principle the selection is now to be made, is not stated by the Minister ; and certainly cannot be easily discovered. The present test of good conduct is so wide in its meshes that nearly all who are subjected to it pass through. Some better test then is required. But we learn from Sir George Grey that the conditions of prison life are such as to render the application of a more certain criterion impossible. The Minister lays down this proposition :—The capacity for resisting temptation, without which the convict may relapse into crime the moment he turns his back upon the gaol, cannot be taught him while he is in confinement ; nor, prior to his discharge, are there any means of ascertaining whether he has this qualification for self-government, or has it not.

But if the old test is to be abandoned, and if the substitution of a better is impracticable, what does this proposal to be more sparing than heretofore in the issue of tickets-of-leave, really mean ? Are the grants of tickets-of-leave to be reduced by some arithmetical rule ? Are they to be assigned by lot, so that, for instance, every tenth convict may gain the prize of liberty, while the nine who draw blanks shall serve out their whole time ? Perhaps, Gentlemen, even this method of proceeding, ineligible as it may seem to you, would be better than that indiscriminate use of the ticket-of-leave, which has prevailed nearly up to this date—a mode of dealing with prisoners which is equivalent to cutting down the sentences of our Courts to less than half their length. Even this not very happy contrivance might, I say, have its advantages. The active predatory life of a malefactor is of limited duration ; and every year which he passes in gaol strikes off no small fraction of his criminal existence. But such a process when applied to numbers is tantamount to a reduction of the criminal class ; so that even this absurd plan of selection, if it were possible to adopt it, might deserve the praise of being somewhat better than that which is to be abandoned.

There are, however, serious drawbacks to be considered.

When the convicts adjudged to penal servitude learnt that they were not to share the privilege of tickets-of-leave, they became sullen, disobedient, and even mutinous. It is to be feared that a similar effect may be produced on the whole body of convicts, by a large diminution in the number of such grants. We learn from M. Béranger, a French judge, who has written on the treatment of prisoners, that a large reduction having been made in the annual grants of pardons to convicts in France, very ill effects were produced. The attempts to escape multiplied, and many prisoners were brought to despair.* In Spain, where by a recent change of the law every sentence must be fulfilled in its integrity, the results have been still more deplorable.† Again, it is evident that this diminution in the number of grants, coupled with the provision which is to delay the issue in all cases until two-thirds at the least of the sentence have expired, must very materially weaken the incentive to well-doing, created by the hope of liberty. Lord Grey, who has had long experience in the treatment of convicts, considers it very important 'that in providing for the prolongation of sentences of penal servitude, it should be distinctly stated in the preamble that the object of the change is not practically to prolong the actual punishment of those convicts who behave well, but to make their discharge at a comparatively early period depend upon their own conduct, instead of being a matter of right.'‡

But, Gentlemen, when the ticket-of-leave is granted, what is to be the position of the holder? It certainly strikes me that the less the faith of the Minister in his reformation at the time of his discharge on licence, the greater need is there for holding him strictly to responsibility after such discharge. Might not the Secretary of State reasonably say to the convict when the ticket-of-leave is put into his hands: 'You have behaved yourself well so far as you had a choice between right and wrong; but that choice lay within such narrow limits as to furnish me with no ground of confidence that you will persist in good conduct now that you are to become your own master.

* *De la Repression Penale; de ses Formes et de ses Effets.* 2^{me} Partie. Par M. Béranger. Paris: 1855. p. 167.

† Second Report Transportation Committee, House of Commons, 1856. p. 171.

‡ Letter from Earl Grey to the Rt. Hon. M. T. Baines, M.P., Chairman of the Committee. Second Report, p. 195.

As, however, you are still under the sentence of the law, and as your recommittal to prison will not deprive you of any right, but only of an indulgence, you are to understand that if your way of life should be such as to create the belief that you have relapsed, or are about to relapse, into your evil courses, your licence will be withdrawn; because, while your liberty will cease to be of any real advantage to yourself—indeed, it will become a snare to you—it will be a calamity to the public.’

If, Gentlemen, this be a reasonable view of the case, it seems obvious that precautions should be taken to keep a watchful eye on the ticket-holder. The sixteenth Resolution of the Committee states, ‘that every convict, on his release with a ticket-of-leave, ought to be reported to the police of the town or district to which he is sent.’* The Committee, by this resolution, did not intend that every member of the police force should have a list of the ticket-of-leave men sent into their district; but they did mean that such a list should be confided to the Chief of that force, to be used fairly and discreetly; assuredly not for the annoyance of such of the holders as are endeavouring to maintain themselves in honesty, avoiding corrupting pleasures and corrupting associates, but for a very different purpose.

Gentlemen, you are probably aware that the police are able pretty accurately to distinguish between the *true men* of their district, with whose demeanour they have nothing to do, and that happily far smaller, but most troublesome, band, whose course of life indicates the necessity of keeping a watchful eye upon all their movements. So long as the ticket-holder avoids association with the latter class, and does his best to procure a place, however humble, in the former, so long the police, unless it betrays its duty, will take care to ignore his existence; lest, by recognising him as an acquaintance, they should add to his difficulties, already, alas! but too numerous. I took upon myself, Gentlemen, a long time since, somewhat presumptuously perhaps, to exhort, through their superior officers, the Police Force of this Borough to a line of conduct in conformity with the view of their duty just expressed. This advice, I have reason to believe, has been followed; indeed I am not aware that the

* Third Report Transportation Committee, House of Commons, 1856. p. iv.

members of the force are exposed to the influence of any motives tempting them to neglect it.

I will now lay before you the view taken by Sir George Grey. 'If,' he says, 'one could always place implicit confidence in the discretion of the police, that might be done [meaning the report might be made as recommended by the Committee]; but,' he continues, 'I certainly should be sorry to call the attention of the police in every case to men released with a ticket-of-leave, for that might have the effect of increasing the difficulty of those among them who are well disposed in obtaining honest employment.'* This, Gentlemen, is arguing against the use, because of a possible abuse—a course of reasoning fatal to any grant of authority to any person whatsoever; as every power may be abused. 'With respect to London,' he proceeds, 'the case is somewhat different. I have had reports from the Inspectors of Police, of the character and course of life of men with tickets-of-leave residing within their districts, and I do not think that under their instructions, which I believe they honestly act up to, any obstacles are placed by them in the way of ticket-of-leave men obtaining an honest livelihood.'†

Gentlemen, I regret to find this invidious, and, I sincerely believe, most erroneous distinction, drawn between the police of London and that of the country. Upon what grounds does the imputation rest? Have lists of ticket-holders been furnished to the heads of police in the various towns and counties in which they are stationed, coupled with instructions how to use them? And, if so, have these instructions been disregarded? No such documents, unless I am grossly misinformed, have ever been issued except in the metropolis; and if not furnished, why is it to be assumed that this most important corps—the Provincial Police—is unworthy of a trust, without which it is impossible that they should afford us the protection which we, who pay for their services, have a right to expect? Of this I am sure, that powers far more open to abuse than any which would result from the possession of the information to which I am referring, must be exercised every day, or the services of the police would be utterly worthless. But, Gentlemen, I have

* *Hansard's Debates*, p. 380.

† *Ibid.*, p. 380.

such confidence in Sir George Grey's desire for justice, that I am quite sure the moment the error under which he has been acting shall be dispelled, he will obliterate the stigma attached by his speech to this large body of our countrymen; and, moreover, will avail himself of their valuable assistance.

I wish I could cherish the same confident hope that when he has enabled himself to acquire, from time to time, information as to the course of life pursued by ticket-holders who misuse their privilege, he will be prepared to give full effect to another resolution of the Committee, viz., 'That to render this system of tickets-of-leave adapted both for the reformation of offenders and the interests of the public, the conditions endorsed upon the tickets-of-leave ought to be enforced more strictly than appears to have been hitherto the case.*' These conditions, Gentlemen, are as follows:—'The power of revoking or altering the licence of a convict will most certainly be exercised in case of his misconduct. If, therefore, he wishes to retain the privilege which, by his good behaviour under penal discipline he has obtained, he must prove by his subsequent conduct that he is really worthy of her Majesty's clemency. To produce a forfeiture of the licence, it is by no means necessary that the holder should be convicted of any new offence. If he associates with notoriously bad characters, leads an idle and dissolute life, or has no visible means of obtaining an honest livelihood, &c., it will be assumed that he is about to relapse into crime, and he will be at once apprehended, and re-committed to prison under his original sentence.'

On this very important branch of the subject, the opinions of Sir George Grey are not in harmony either with the resolution of the Committee, or with the conditions framed by his own department. 'There has been,' he says, 'a good deal of discussion as to the principle upon which these revocations have been directed. There have been cases in which the licences have been revoked without actual proof of guilt upon the part of the convict holding the ticket-of-leave, further than the information of the police or others that he was leading a dishonest life, and was the associate of thieves. The number

* Third Report Transportation Committee, House of Commons, 1856. p. iv.

so revoked without actual conviction is forty-one.* Thus, Gentlemen, the Home Department was, by its own admission, able to enforce the conditions of its licence so long as it thought fit to exercise the authority which it had sought and obtained from the Legislature. Why, then, not comply with the recommendation of the Committee? I will read Sir George Grey's reasons for a different course. 'But,' he continues, 'as a general rule it has been deemed expedient to act with caution in these revocations, and not to send a man back to several years of his original sentence, where no charge on oath could be preferred against him before a magistrate, and where he had not the opportunity of meeting that charge as he would have had upon a trial.'

* * * * *

'To revoke the licences of men on the mere assertion of the police that they were the associates of thieves, would be to put a most dangerous power in the hands of the officers, without a sufficient safeguard against its abuse. Even in some cases of summary conviction, where the offence has been extremely trivial, the licence has not been revoked, because it was thought to be a disproportionate punishment to remit a man back to prison for three, four, or it may be five years, for the commission of an offence for which a very short confinement would be ample punishment. But, generally speaking, in cases of conviction for any crime whatever, at assizes or sessions, or by summary jurisdiction, the licence has been revoked.'† Upon this statement, Gentlemen, it is obvious that the obstacles which have arisen in the mind of the right honourable gentleman, to prevent him from adopting this conclusion of the Committee, are mainly owing to his indisposition to condemn any man unheard—a sentiment in which we shall all most heartily concur. Yet I cannot think it presents any bar to adopting the Committee's resolution. Why not call on the ticket-holder for an answer? Why not give him an opportunity of rebutting the charges against him? Doubtless, in the present state of the law, such an inquiry must be made without putting the witnesses under the sanction of an oath; and without the

* *Hansard's Debates*, p. 360.

† *Ibid.*, p. 360.

power of enforcing the attendance of witnesses refusing to appear. For myself I am not apprehensive of such difficulties often preventing those who conduct the inquiry, from arriving at a safe and just result. But if, in the opinion of the Home Department, the want of these powers is a conclusive objection to inquiry, why does not the new Bill supply them? Why is it so framed as to leave matters, in this respect, just as they now are?

Let me next examine how far the course preferred by Sir George Grey, to that recommended by the Committee, does or can accomplish the desired object, namely, that of keeping licensees in check; and of returning them to prison, if they misuse their liberty. It seems to have been forgotten that, upon the average, many offences are committed, and a term of impunity is enjoyed, before evidence can be obtained to bring any one offence home to the culprit; although the conditions must have been framed on consideration of this well-known state of things. Gentlemen, the ticket-holder is informed, as you have already heard, that it is not necessary he should commit a new offence; but that his general course of life will be watched, and that, if that be unsatisfactory in certain specified particulars, the suspension of his sentence by which he has enjoyed his liberty will be terminated, and the law will again take its course. It is obvious too—and this fact is verified by a return made to the House of Lords—that in the majority of cases the sentence, on a fresh conviction, must outlast that pronounced upon the former conviction; and that, in all such instances, the revocation of the licence would be a futile ceremony.

Again, the Department seems entirely to have lost sight of the cost to the community, incident to this mode of proceeding. I speak not of pecuniary cost, yet that expense is far from inconsiderable. I speak of the injury inflicted by the multiplication of crimes—the necessary accompaniment of such a scheme. Crime, surely, ought not to be so lightly considered. It is not to be looked upon as a mere incident, useful as setting in motion the machinery of the law, and thus conveniently delivering an unworthy ticket-holder back to gaol, without trouble to the Home Office. Crime implies the suffering of the innocent. Sometimes it involves a wide-spread alarm, in comparison of

which the pain or loss endured by the party immediately injured, sinks into insignificance.

Each of these remarks, Gentlemen, is illustrated by the case of Thomas Wotton. Wotton had been adjudged to transportation for fifteen years. He obtained his ticket-of-leave, and came to reside at Birmingham. Having myself requested the Superintendent of Police to watch, for six weeks, the conduct of all ticket-holders known to be in the town, and then to report to me their course of life, I received, as regards Thomas Wotton, the following information:—‘Went to work at Nottingham. He states that he came to Birmingham at the suggestion of the Nottingham police. He has always borne (since known to the Birmingham police) a bad character, and keeps company of thieves, and has again taken to thieving.’* The report from which I cite this passage is made upon the testimony of Inspector Glossop, Sub-Inspector Tandy, and Police-Sergeant Manton. I transmitted the document to the Home Secretary; but he informed me he was of opinion that it did not show ‘sufficient reason to revoke the licences of any of these convicts.’ He stated, however, that he had ‘desired the Inspector of Police, at Birmingham, to warn those among them who were suspected of having returned to dishonest practices, that their conduct would be carefully watched, and that, on the first occasion of any offence, however slight, being legally brought home to them, their licences would be cancelled.’ In the same letter I was also informed that Sir George Grey had ‘recently adopted the practice, in certain cases, of restricting the licences, so as to prevent the return of convicts to their former associates.’† And believing that if ticket-holders were not permitted to seek harbour in the larger towns, they could not persist in a dishonest course of life without quickly falling into the hands of justice, I was well satisfied to have obtained so much by my interposition. But, Gentlemen, we cannot reflect upon the consequences which followed this lenient decision, and still less upon the consequences which might have followed it, without most painful feelings being excited in our breasts. I will not parade the narrative of Wotton’s outrage before you. I would have refrained

* Second Report Transportation Committee, House of Commons, 1856. p. 159

† *Ibid.*, p. 11.

from adverting to it, if it did not appear to me to raise an unanswerable objection to the course of dealing with ticket-holders, advocated by Sir George Grey in the passage from his letter just read to you. Here we have a convicted felon—his sentence yet hanging over him. He is well known to be pursuing his nefarious career. The station-master at the railway observes him and his companions quit Birmingham for the North, and is satisfied they are on their way to the perpetration of some crime. Yet all this time the hands of justice are paralysed !

Desirous, Gentlemen, after pondering upon the humiliating absurdity of such a miserable state of things, to escape from the disquieting thoughts to which it gave birth, I opened a book, and my eye fell on Lord Chatham's boast that every Englishman's house is his castle. 'The poorest man,' says he, 'may in his cottage bid defiance to all the forces of the Crown. It may be frail, its roof may shake, the wind may blow through it, the storm may enter, the rain may enter, but the King of England cannot enter. All his force dares not cross the threshold of the ruined tenement.' Very fine, Gentlemen, no doubt, but not even Chatham's eloquence could make me forget that, although the King of England cannot enter, Thomas Wotton can. Though all the king's forces dare not cross the threshold, Thomas Wotton and his murderous gang are free from restraint; they break through the defences of a peaceful dwelling at midnight—pursue a mother, just risen from the bed on which she has endured nature's sorest agony—chase her and her new-born infant from chamber to chamber, and are only defeated in their execrable project by the nerve and self-possession of an old man, whose grey hairs might have protected him from blame, had he shrunk from the unequal contest !

One conclusion, Gentlemen, is irresistible. If the science of jurisprudence can do nothing better for us than all this, it has little more claim upon our respect than the so-called science of astrology.

Gentlemen, it is all very well to threaten burglars, and intending murderers, with the withdrawal of their licence on their committing the slightest offence ; but those acquainted with the habits of great malefactors, know well that they have self-command enough to avoid coming into contact with the

officers of justice for trifles. They concentrate their thoughts on the means of compassing some lucrative crime, yielding a large harvest of plunder. Having accomplished their object, they are engaged in squandering their ill-gotten wealth ; and it is not until they find it necessary to replenish their store, that they come into further hostility with the law.

Now, Gentlemen, let us pause and review our position. And first as to our gains. The distinction with regard to privileges—repugnant to all principle—between penal servitude and transportation, is no longer to exist. Transportation is to be so modified as not to work injustice to colonies receiving our convicts. And if it is not wholly to be abolished, perhaps this is all the amelioration of which the system admits. But here a difficulty has to be encountered. What test is to be used in the selection of convicts for transportation, so that none shall be sent but such as will make decent and useful colonists ? According to Sir George Grey, there are no possible means of distinguishing, among prisoners, between those whose ‘good conduct in prison will be maintained when they go at large, and those whose good conduct is merely the result of the compulsion imposed upon them, or of their desire to obtain their freedom as soon as possible with a view to enable them to return to their former life of crime.’ How this difficulty is to be met we are not apprised.

Our next gain is the recognition of the absolute necessity of keeping incorrigible malefactors at home, and of confining them for life.

Our last advantages—lengthened imprisonments for convicts, and a diminution in the number of tickets-of-leave—(if this latter is to be deemed a benefit)—we purchase, as I have already said, at a costly sacrifice. In what state then are we left ? The principle of encouragement—of hope—is still limited to great criminals ; while the exertions of the minor offender to shorten his imprisonment, are to remain unavailing. Ticket-of-leave men are to be held to no more responsibility than at present ; which is nearly the same thing as saying they are to be held to none at all. Finally, the consequences of these errors and shortcomings is, that the discharge of unreformed criminals—that monster grievance—will remain unredressed. On the whole

then, Gentlemen, we cannot congratulate each other in much warmer terms than those which Belial addresses to the fallen spirits—

‘ ——— our present lot appears,
For happy though but ill, for ill not worst.’

One word more, and I close my Charge. Having so largely commented on the speech of Sir George Grey, I should lay myself open to misconstruction, if I omitted to observe upon what fell from him regarding myself. Not imagining that the Home Office would establish a distinction between convicts adjudged to transportation and convicts adjudged to penal servitude, and being strongly impressed with the benefit to prisoners, as well as to the public, of their acting, while in confinement, under the influence of hope, I pointed out to them indiscriminately, when passing judgment, that if they remained under punishment during the whole term to which they were sentenced, it would be their own fault; for that, by diligence and good behaviour, they might work their way to liberty at a much earlier period. Sir George Grey complains that I took this course without any communication with the Home Office. But the right honourable gentleman forgets that—shortly after the Act came into operation—in correspondence with the Home Department, I brought my course of proceeding under its notice on three distinct occasions; and that not a hint of objection did I receive in return. A subsequent correspondence, containing precise references to the letters in which these communications had been made, has been long in print, and will be found in the report of the Committee, to several of whose resolutions I have called your attention.* Sir George also states that I assumed that sentences would be shortened to one-third of their length. I made no such assumption. But the right honourable Secretary having determined that, although my sentences were of unimpeachable validity, yet it was better to set them aside than to ratify the hopes which I had held out, called upon me to advise as to the extent of remission which then became necessary; and I, striving to meet the difficulty into which that decision threw me, as best I might, considered that some convicts would perhaps have worked themselves out of prison after a

* Appendix to Second Report. p. 175.

detention of only one-third of their respective terms; but having no means of distinguishing as regards the capacity of one convict over another for performing that task, I thought it incumbent upon me, if I fell into error, to err on the side of mercy; therefore I made the same recommendation with respect to all: I advised the reduction of each sentence to one-third of its length. Gentlemen, the kind recognition which Sir George Grey was pleased to make of my very humble services in the cause to which I am attached, not only demands my thanks, but furnishes a convincing proof that nothing but a failure of memory, common to the age at which he and I have both arrived—an infirmity from which I myself am suffering every day—could have led him into these inaccuracies. They are not very material, and I could have wished to pass them by without remark.

From the 'Birmingham Journal,' April 4th, 1857.

‘DISCHARGE OF THE GRAND JURY.

‘The Foreman, Mr. Morris Banks, addressing the learned Recorder, said, that as Chairman of the Grand Jury, he had on their behalf to thank him for the very able and deeply interesting address he had delivered on the preceding day. The Grand Jury were fully aware that the dealing with criminals was the great question of the present day; and, on his own part, he would say that he was very greatly impressed with the views he (the Recorder) had taken of the subject; and he could assure him that the country was under the deepest obligations to him. The Recorder briefly expressed his happiness to have the concurrence of the Grand Jury in the opinions he had expressed.’

SEQUEL.

The following synopsis of the state of crime in Edinburgh, during the year 1856, supports, as far as the experience of one city can be relied upon, the statement of Sir George Grey regarding the whole country. It is extracted from the *Edinburgh News* of January 10th, 1857:—

‘ The police books show no increase in culpable homicides but rather a decrease, the numbers being—

1852.	1853.	1854.	1855.	1856.
7	13	6	4	4

but the assaults to danger of life or with lethal weapon since 1852 have been increasing, as follows :—

1852.	1853.	1854.	1855.	1856.
42	58	65	88	130.

This shows a fearfully steady increase of desperate crime, while, for the same years, the offences against property have been diminishing. Take robbery, and the cases are—

1852.	1853.	1854.	1855.	1856.
26	32	13	15	17

and for housebreaking, or rather everything that can by law be called housebreaking—

1852.	1853.	1854.	1855.	1856.
232	93	108	85	136

So that, although more housebreakings have been reported last year than in 1855, yet they are nearly 100 less than in 1852, which was before the present panic commenced. The result, however, of the panic is evident in the increased use of lethal weapons in cases of assault, although, of course, the increase is not wholly attributable to this increase of dread among the people. The other facts show that, with the exception of assaults, murderous or otherwise, all other kinds of crime have in Edinburgh been decreasing during the year just ended. The gross number of offences against the person reported were—

1852.	1853.	1854.	1855.	1856.
65	80	86	105	150

The gross number of offences reported against property being—

1852.	1853.	1854.	1855.	1856.
2000	1727	1634	1517	1583

while the same decrease, or rather absence of increase, is shown in the other classifications of crime.

‘ We have given the cases *reported* to the police. Take, for example, the number of persons tried and sentenced in the police court. There were in

1852.	1853.	1854.	1855.	1856.
1029	877	793	720	728

while persons brought into court for simple contraventions of the Police Act show the same kind of decrease:—

1852.	1853.	1854.	1855.	1856.
10,242	10,571	8769	8663	7677

And when we state that the convictions last year were 7407, against 8277 in 1855, it will be seen that the proved contraventions bear nearly the same proportion to those reported as in former years.'

This abstract is authenticated by Mr. Duncan M'Claren, of Edinburgh, from whom I received it. He has continued it to a somewhat later period, in a letter to me, dated January 24th:—

'The decrease in the daily average number still goes on. During the present month, so far as it has gone, the average has been about 298. During the same period of 1856 it was 335, and during 1855 it was 380; so that, in spite of all the warnings to the contrary, and the unfavourable effects arising, first, from the numerous enlistments, and, more recently, from the discharges, the decrease goes on steadily, and in the face of long-continued dear food and work not quite so easily got of late as formerly.'

From the 'Caledonian Mercury' of April 4th, 1857.

DECREASE OF CRIME.

'In the prison of Edinburgh, on the 1st inst., there were only 269 persons confined (including seventeen debtors); and, at the corresponding date last year, there were 353. The average daily number in the month of March, for the seven years ending in 1853, before the passing of the Forbes Mackenzie Act, was 589; and in the month of April, for the same period of seven years, the daily average was 561—thus proving that the present number is less than one-half of the previous average number.'

It is right to mention that Mr. M'Claren attributes the decrease of crime in Edinburgh to Mr. Forbes Mackenzie's Act, prohibiting the sale of intoxicating drinks during the whole of Sunday.

The subjoined letter brings up the results of Captain Crofton's treatment of criminals to the latest possible date:—

‘Cork, April 8th, 1857.

‘MY DEAR FATHER,—Being in Ireland, as you are aware, on business, I have availed myself of the opportunity to visit some of the prisons and reformatory institutions of the country; and have thus obtained much information upon the subject which so greatly interests yourself and the public, viz., the reformation of criminals.

‘The endeavour to reform adult offenders, and to establish tests by which their reformation may be ascertained before releasing them, an endeavour which many excellent persons in England regard as hopeless, has been successfully made in Ireland under the judicious management of Captain Crofton and his able colleagues, Mr. Lentaigne and Captain Whitty. I will shortly detail the means which have been adopted.

‘Male offenders sentenced to transportation are, in the first instance, placed in Mountjoy Prison, in Dublin,—a cellular prison similar to Pentonville. I went over this gaol, but observed nothing which calls for particular notice. The employment there consists chiefly in oakum-picking. After remaining at Mountjoy nine months, the convicts are removed to Spike Island, which I have visited. It is, as you are aware, an island in the Cove of Cork, where the Government are erecting fortifications for the protection of that important harbour. The work performed here is principally stone-hewing, masonry, and the attendant branches of labour; which were, when I visited it, being pursued with vigour and efficiency. Prisoners arriving here, whose conduct in Mountjoy has been good, are placed in the third class; the rest are classed as probationers. At the end of every month marks are awarded to the prisoners for industry, diligence in school, and good behaviour; three marks being the maximum number attainable in each department. On obtaining fifty-four marks, a prisoner is raised from the probationary to the third class, or from that to the second. The attainment of fifty-four more good marks, raises a prisoner another step, and so on until he has passed through the third, second, and first classes, and has entered the exemplary class; when he is distinguished by a peculiar costume. After remaining a certain time in the exemplary class, the prisoner is removed to an Intermediate Prison. I should mention that any misconduct is punished by degradation to a lower class. In

some instances offenders have been reduced from the exemplary to the probationary class.

‘ Prisoners eligible for removal to an intermediate prison, if they are handicraftsmen or too weak for hard labour, are transferred to Smithfield Penitentiary, in Dublin. This is an old prison which has been converted into a reformatory. Here they are kept in association (as indeed they have been in Spike Island), and are employed at their own trades (supposing them to be acquainted with one), such as tailoring, shoemaking, carpentering, tinwork, &c. Those who are ignorant of any, are instructed in one, if capable of learning it. Old men, and others unable to acquire a trade, are employed in the housework of the establishment, or in mat-making. The men, when I visited Smithfield, were labouring vigorously, and their work appeared to be well done. The clothes, officers’ uniforms, &c., for the different convict prisons in Ireland, are made here. The accounts of the institution were shown to me. The value of goods already sold, after deducting the cost of materials, has left a profit of above 800*l*. This is actually cash in hand, not merely an estimated amount; and divided among the number of prisoners, it gives an average result of about 17*l*. per head per annum. Indeed, Mr. Lentaigne informs me that, were it not for the number of old men among the inmates who can earn very little, the institution would be self-supporting; the earnings of the able-bodied covering the cost of their food and clothing, and their share of the officers’ salaries, and general expenses of the institution. Even now, however, the excess of expenditure over income derived from the men’s labour, is not very great. The inmates are allowed a small portion of their earnings, *e.g.*, so much for a coat, pair of shoes, &c., made by the artizans; and a weekly sum to those employed in housework. Of these earnings, 6*d*. a week is paid to them in ready money; which they are allowed to spend in tobacco, red herrings, or what little luxuries they will, except drink, which is strictly forbidden. This is done as a test of self-control. Very little is now spent; it is generally saved for better purposes.

‘ The prisoners, as I have mentioned, work in association; and several sleep in a cell, where they have gas-light, and may read, &c., after they retire, if they please. They are also employed in turn to go about Dublin as the messengers of the

institution. The officers are very few in number, and could be easily overpowered were their wards so minded. Nine and a half hours daily are devoted to work ; after which, in the evening, Mr. Organ, the schoolmaster to the institution, comes and holds classes. Writing, reading, arithmetic, &c., are taught, with which Mr. Organ contrives to combine moral and other useful training. Fortunately, school-time arrived before I left the institution. First, copies were written. Many of the men could write well, and most of them had greatly improved after entering Smithfield. Some, however, were mere beginners. One poor old man, who was in very large hand, had been six years in a convict prison, without having been taught to write. Mr. Organ conducted a reading class. This (like all his classes, I believe,) is permanently divided into two parties, who sit opposite each other, and between whom there is much wholesome rivalry. After one man had read a passage, Mr. Organ questioned him on the meaning of the words, their orthography, &c., and the occupants of the opposite bench also questioned him and his mates,—all striving for victory. I was informed that the men work hard in their cells at night, preparing for these friendly conflicts, both by asking posing questions, and by themselves answering the questions propounded by the ‘hon. gentlemen opposite.’

‘During the day Mr. Organ is occupied in procuring situations for inmates who are eligible to leave the institution. When a man has been four months in Smithfield, and has behaved well, he is entitled to be *considered* for release on a ticket-of-leave, to which, on the average, he makes good his claim in an additional month ; but he must further wait until a place of work has been obtained for him.

‘Thus it occurs that some who have raised themselves into the intermediate prison have not been able to attain to their discharge, on a ticket-of-leave, before the expiration of their sentences ; while again others have not been able to reach even the intermediate prison, but have remained their whole term in the lower grades. It must, however, be remembered that many convicts had passed a considerable portion of the term to which they were adjudged, before the establishment of the ticket-of-leave system. Mr. Organ still keeps up a communication with the convict when in place, if he reside in the neigh-

bourhood of Dublin ; and almost always receives from him a weekly contribution to be deposited in the savings bank as an emigration fund—the strong desire of both male and female reclaimed criminals, being to emigrate.

‘Masons and other able-bodied labourers who have reached the exemplary class in prison, are sent to the ‘Forts.’ These are two strongholds which Government are erecting upon the two headlands forming the mouth of the Cove of Cork. Here the convicts are lodged in moveable iron buildings. A sufficient number of these are now completed, to enable this class to be employed wherever the public service requires them. I have not had an opportunity of visiting the Forts, but am informed that, as nearly as circumstances will permit, the system adopted in them resembles that of Smithfield. Piece-work not being practicable, a weekly allowance out of his earnings is made to each labourer.

‘Every male convict liberated on ticket-of-leave, whether from Smithfield or the Forts, is furnished with a sort of warrant, which he is obliged to produce to the police of his district monthly ; and if he removes to a new district, he is bound to obtain a new warrant addressed to the police of that district, who are informed of the circumstances of his case.

‘Women are dealt with on a plan somewhat similar to that pursued with male offenders. They are first imprisoned in the Dublin Newgate, now devoted exclusively to the reception of female convicts. Here such as are Roman Catholics are visited by the Sisters of Charity, who give them secular and religious instruction. I was so fortunate as to witness the religious teaching of these ladies. After remaining nine months in Newgate, the women are removed to a prison called Grange Gorman, which I have not seen, but where I learn a system, as regards marks, is in operation similar to that in use at Spike Island. When eligible for a reformatory, such of them as are Roman Catholics are sent to an institution established by the Sisters of Mercy at Golden Bridge, near Dublin. This establishment I had the advantage of visiting. As it is not, like Smithfield, a Government prison, but a private institution, analogous to the reformatories for children in England, the women are sent here with special tickets-of-leave which are restricted to the institution, and would be forfeited if the ticket-holder

departed without permission. The employment at Golden Bridge consists chiefly in washing, sewing, and house-work : and after a due probation places are found for the inmates. The Sisters of Mercy keep up a constant communication with those women who have left their establishment, and frequently, as a reward, permit them to spend a Sunday at Golden Bridge. The female discharged prisoners, like the male, evince a strong desire to emigrate; and the worthy Sisters take charge of weekly contributions to the fund necessary for that purpose.

‘ Protestant women are sent to two Protestant institutions (which I regret I have not been able to visit), where they are treated, I understand, on a plan somewhat like that adopted at Golden Bridge.

‘ The practical effect of prison discipline I have described as in operation in Ireland, is, that of 500 men and 33 women who have been released in 1856, conditionally and unconditionally, after passing through the reformatories, only seven persons (all of them men), have been known to be reconvicted; and, although 750 males have been subjected to the intermediary treatment, only six or seven very slight offences have taken place whilst under detention. It is true that some out of the whole number discharged have been lost sight of, but the great majority (including all the women, with whom unremitting communication has been maintained) are known to be doing well.

‘ In addition to these highly satisfactory results, crime, from whatever cause, is much diminishing in Ireland. The officer who accompanied me over Spike Island, told me that there are now only 900 prisoners there, though there have been formerly 2300 at one time. The only reason he could assign for this diminution is the decrease in convictions.

‘ Garrotting, I am informed, is utterly unknown in Ireland; and robbery with violence of any kind is rare.

‘ Hoping these details may interest you,

‘ Believe me, yours most affectionately,

‘ ALFRED HILL.

‘ M. D. Hill, Esq., Q.C.’

Mr. Organ is not merely a schoolmaster, he is a lecturer.

‘ Mr. Organ does not treat his audience as prisoners or as children; he treats them as men, as he was accustomed to treat

his pupils in his night-school. He does not make speeches, he *tells* them of common things, of the air, the earth, the planets, the tides; of the animate and inanimate world; of physical geography; of the British Empire and its colonies; of the rates of wages, and of the opening for honest industry in each of these dependencies. He tells them, and explains to them, the rules of grammar and of arithmetic; and as ignorance, through early neglect, is not shameful in his eyes, he has so far ingratiated himself with his class, that any man who does not clearly comprehend any portion of the discourse, at once holds up his hand, and at this signal the teacher, leaving his desk, goes to the place where the man sits, and explains the difficulty to him, and does not leave him till perfectly satisfied that all is understood.*

Mr. Murray, a zealous and indefatigable worker in the reformatory cause, gives testimony to the reality of the reformation of Irish ticket-of-leave men. 'I have seen,' he says, 'ticket-of-leave men starving, and yet continuing honest; I have known ticket-of-leave men walk from Clare and Cork, to Dublin, to seek employment, and offering to work for what they call 'their bit'—mere food, and sleeping in Night Refuges, and most heartily thanking the man who gave them 'their bit,' and why?—because he saved them from the blighting laziness of the Workhouse, or from the commission of a crime which would throw them once more into the power of the law. You know what good a Patronage Society can do. You know how Demetz ascribes the noble results of Mettray to its assistance. The Birmingham Prisoners' Aid Society is every day proving how, when carefully conducted, the Patronage Society is the best and surest friend to the discharged prisoner—being his friend, it becomes a benefactor to the State, the truest upholder of order, a reducer of taxation, and its supporters are the surest, because the quietest, yet most active patriots in the commonwealth.†

In a letter to the editor of the *Dublin Daily Express*, Mr. Murray proposes and answers this important question—'Why,

* *Not so Bad as They Seem: The Transportation, Ticket-of-Leave, and Penal Servitude Questions.* A Letter to M. D. Hill, Esq., Q.C., by P. J. Murray, Barrister-at-Law. p. 40. Dublin: Kelly. 1857. Price One Shilling.

† *Ibid.*, p. 149.

it may be asked, has the system been successful in Ireland, and so unsatisfactory in England? For the simple reason that the provisions of the Act have been carefully observed in Ireland, and carefully neglected in England; because the men have been left to *find* employment on quitting the prison in England, whilst the employment has been secured to them before leaving the prison in Ireland.*

The reader has seen that the ticket-holders in Ireland are completely under the surveillance of the police, being made to obtain a warrant, and report themselves to the authorities whenever they change the district which they inhabit—a circumstance which appears to have escaped the attention of Sir George Grey.

As the experiment has been instituted, it is very desirable that it should be continued until its effects are fully ascertained; but I must own that I think the form of proceeding likely to prove objectionable. It is degrading to the ticket-holder to be brought into contact with the police, and I should fear his reluctance to comply with such a regulation would lead him to evade it, and thus bring him again into hostility with the law. I cannot but think the plan of a photographic portrait, accompanied by a copy of the ticket-of-leave, which always contains a description of the holder, being transmitted to the chief officer of police in the various districts sufficiently populous to afford harbourage to criminals, a preferable arrangement.

From the 'Times' of February 23rd, 1857.

'A BURGLAR SHOT BY A CLERGYMAN.'

'The most daring case of burglary which ever took place in Derbyshire occurred between one and two o'clock on Saturday morning last, at the residence of the Rev. J. Nodder, of Marsh Green, Ashover, about eight miles from Chesterfield. The house in which the reverend gentleman resides stands by itself in a secluded place, about half-a-mile from the village. Mrs. Nodder slept in a room in front of the hall, and Mr. Nodder in an apartment at the back of the building, adjoining the servants' bedrooms. An infant, about seven weeks old, slept in

* *Dublin Daily Express* of December 4, 1856.

a cot in Mrs. Nodder's room, but it awoke between one and two o'clock; while Mrs. Nodder was attending to it she heard a noise, which she first thought was occasioned by her husband stirring the fire in his room, and she took no further notice of it. In a minute afterwards she heard the noise again, and went to the window of her bedroom and drew the blind a little on one side, when she saw the figure of a man outside the window and close to the glass. She was in her night-dress, and immediately drew back, put on her slippers, lifted the baby out of the cot with one hand, and rushed out of the room, shutting the door after her, and holding it in her hand. While she was doing this, six of the lower panes of glass in the window and the centre framework were smashed, and two men entered the room through the window by means of a ladder, which they had procured from the stackyard adjoining the house. Mrs. Nodder held the door until she was overpowered, when she rushed into a passage on the stairs and locked the door, leaving the burglars fastened in the room. They were provided, however, with a 'jemmy,' or small crow-bar, and with this instrument they broke the panels of the door, and unlocked it, and so got into the passage communicating with the bedrooms. The first room they entered was that occupied by a lady named Miss Heeley, a niece of the reverend gentleman, who was so alarmed that she lifted up the lower sash of the window and jumped into the yard, a height of fourteen feet, with nothing on her but a night-gown, and in this state ran for three-quarters of a mile into the village to the rectory-house. After escaping from her room, Mrs. Nodder went into that occupied by her husband, and called out, 'Papa, papa, here are thieves, and they'll murder us.' She had locked the bedroom door after her, and Mr. Nodder jumped out of bed, and armed himself with a pair of large horse pistols, which were loaded, on the top of a cupboard, which contained the reverend gentleman's plate. The burglars outside called out, 'Now lads; now lads, come on, they're here!' Mr. Nodder, who was in the room, called out, 'If you enter here I'll shoot you.' The burglars took no heed, but prized the door open, and one of them entered the room with a black mask over his face, and a black gown on his body, which covered his clothes. He had a candle in his left hand, which he held down towards the lower part of his

body. Mrs. Nodder, who was greatly alarmed, said to her husband, 'Oh, my dear, give them what they want, or they'll murder us.' Mr. Nodder stepped about three yards back, said to the man, 'I'll give you what you want,' and fired one of the pistols at the man, and the shot entered his abdomen. The burglars now made a precipitate retreat, and as the man ran the shot fell from his clothes. They fled into a bedroom and jumped through a window, taking the glass and framework with them. They had to alight in the yard, which was about fourteen feet from the ground, and adjoining the window through which Miss Heeley had jumped a short time before. Mr. Nodder rang the alarm-bell immediately, which brought about a dozen persons to the place, and a search was immediately instituted for the wounded man, as it was believed that he was so crippled with the shot and the leap through the window that he could not escape from the neighbourhood. Information was also given to Mr. Holmes, Superintendent Constable of the district, and also to Mr. Radford, Superintendent of the Chesterfield borough police, both of whom made a minute investigation of the premises. The burglar who had been shot left traces of blood in the direction in which he had run, and the marks of blood and pieces of flesh on the window through which they had leaped left no doubt that either one or both of them were severely cut. A large yard-dog, which was turned loose at night, made no alarm, it having been drugged. Footmarks were traced from the hall across the flower garden, and in the direction in which they had run, by Mr. Radford, Mr. Milnes, a county magistrate, who resides near, and Mr. Nodder himself; and in a field, about 200 yards distant, Mr. Radford found a mask and a dress, which had been used as a disguise, and three others were found during the morning, clearly showing that at least four persons were engaged in the burglary. Miss Heeley, the lady alluded to above, lies in a precarious state. She is suffering severely from an injury to the spine, and great nervous excitement. The police have obtained a clue to the burglars, which, we hope, will lead to their detection. A butcher, who was travelling from Wirksworth to Chesterfield market, overtook a man at Kelstedge, near Ashover, whose leg was bandaged up and much swollen, and who lay by the roadside, just within a gate. The man, whose hands were cut,

asked for a ride to Chesterfield, and he gave the driver one shilling to take him. He was assisted into the cart, and gave two different stories of how he had become lame. First, he said, he had been robbed; and, secondly, he said he had been engaged in a prize-fight for 50*l*. On their arrival at Chesterfield the man was put down at the White Horse, where he had his boots and clothes cleaned, and he was conveyed to the Chesterfield station in the omnibus, and took a ticket for Derby. From what information has been gleaned, there is reason to believe that the burglars belong to a Nottingham gang.'

From the 'Birmingham Mercury' of March 7th, 1857.

'THE ASHOVER BURGLARY.

'Statement of Miss Heeley.

'In the reports of the desperate burglary perpetrated on Saturday morning, the 21st ult., at Marsh Green House, the residence of the Rev. J. Nodder, particulars are given respecting the flight of the governess, which are, to some extent, incorrect. Miss Marriane Heeley, the young lady referred to, who is a niece of Mr. Nodder, and not the governess, as stated, has addressed a letter on the subject to her uncle, Mr. Edmund Heeley, of this town, from which we have been courteously permitted to make the annexed extracts:—

'“I had not been asleep much more than three-quarters of an hour on Friday night, or rather on Saturday morning, having been kept awake with a bad cough, when I was aroused by hearing a tremendous smash, which, I have no doubt, was the panel of the door the men broke with a crow-bar, and a great noise of men shouting. I jumped out of bed and opened my door, intending to get to the alarm bell, which rings in the room next to the one I occupied, but saw a most hideous-looking man, having on a mask and a tall cap. He also appeared to have a many clothes on, as if to disguise his figure. He held a candle in his left hand, and was looking up the attic stairs; I gazed at him a few seconds, until he turned rather towards me. I then closed the door, and held it; the key being on the outside. Almost immediately the robber endeavoured to open it, and succeeded in doing so about half an inch. I pushed it to again, and he then struck it two or three blows with a heavy instru-

ment, and went away. From the tremendous shouting I thought the villains were murdering my dear uncle, and knew not what to do to save him, except going for assistance, as it would have been useless for me to have offered any resistance. I, therefore, as the only chance of doing him service, opened the shutters and window, and getting outside took hold of the window sill, let myself down the length of my arms, and then permitted myself to drop. I immediately jumped up, ran towards Ashover, and stopped at the first cottage I came to, which is about a quarter of mile from Marsh Green House. Having aroused the inmates, and obtained a promise that the man would go to my uncle's directly, I went on to the next dwelling-place, a quarter of a mile further, found a man up at his work; he came out to me. I told him that Mr. Nodder's house had been entered by thieves, and he very kindly procured the assistance of two or three men living in the neighbourhood, and they hastened towards Marsh Green. I then almost flew to the rectory, where I continued knocking until I heard the curate's voice at an upper window. I exclaimed, 'Oh! Mr. Thrupp, can you send some men to Marsh Green—there are thieves in the house.' In a few seconds, having thrown on a few clothes, he came down, followed by his wife, and let me in. I had injured my back by falling from the window, and was so ill that Mrs. Thrupp had to assist me upstairs to her drawing-room, whilst her husband set off for Marsh Green to render any assistance in his power. It was a great relief to my mind when he returned, and told me they were all safe. * * * I returned to Marsh Green House on Saturday afternoon, in my uncle's carriage, and am now under medical treatment, having sustained what is termed a concussion of the back. I am going on very well. Fortunately on the night of the burglary I had on a flannel dressing gown, on account of my cold. I shall be much obliged if you will tell your friends my motive in escaping through the window, as the papers have led the public to suppose I did it for the sake of self-preservation. My aunt is recovering from the excitement consequent upon the attack of the burglars, but it has made her exceedingly nervous.'

From the 'Birmingham Journal' of February 25th, 1857.

* * * * *

'It was said that this man was traced to Derby, where he took a ticket for Birmingham.

'The suspicion that the wounded burglar had come to this town was strengthened by the discovery of part of a Birmingham newspaper in a plantation near the reverend gentleman's house; and on Monday morning, Mr. Holmes, the Ashover Superintendent of Police, came to Birmingham to consult the police as to the steps necessary to be taken. Inspector Glossop at once determined to search the houses where dwell the A 1 burglars. The most likely of these he thought was a house in Duddeston-row, kept by Mrs. Haden, the wife of a notorious receiver of stolen property, whom the Recorder transported for life a few years back. Mr. Glossop knew that here, when 'at home,' lived a man known to the police, and his associates, by the name of 'Shog,' who some time back 'left his country for his country's good,' for fourteen years; but who found his country so inconsolable on account of his loss, that in 1855 he accepted a ticket-of-leave, and once more made Birmingham detectives happy by the knowledge that he was in their midst, carrying on his 'little game' more successfully than ever. There being no doubt that by associating with his old friends 'Shog' had made the recall of his ticket-of-leave possible, Mr. Glossop had communicated with the Recorder, and the Recorder had communicated with the Home Secretary, and the Home Secretary had communicated with somebody or nobody, as the case may be; but 'Shog' remained at large. In spite of the snubbing thus administered to the police, Mr. Glossop thought he might as well inquire after the health of 'Shog,' or anybody else who might be Mrs. Haden's lodger that morning. Down to Duddeston-row he and Holmes went. No one found, though evidence most satisfactory that all Mrs. Haden's beds had been occupied during the night, one of these probably by the owner of a fur cap, very wet, which Mr. Glossop put in his pocket, not oblivious of the fact that on the night of the robbery rain came down in torrents. He also noted the presence of a bottle of hartshorn and oil, a medicament useful in case of a sprain, whether caused by the leap from a clergyman's window

or otherwise. The hospitals were then searched, and all the doctors and leech-women in the neighbourhood of Duddeston-row visited, but yet no trace of gun-shot patient discovered. Towards dusk the officers again visited Mrs. Haden, and found her preparing for tea. Though only herself and son were in the house, Mr. Glossop observed that three cups were on the tray. The only explanation she gave of this was, 'I always do put three cups;' and once more was she relieved of her prying visitors. Fresh inquiries were made in the neighbourhood, and at last, in Allison-street, Mr. Glossop found a woman who acknowledged that at ten o'clock that morning she had applied six leeches to the sprained ankle of a man who was at Mrs. Haden's. Back to Duddeston-row the officers went; neighbours positively affirmed that no man had left Mrs. Haden's house during the day; but ultimately Mr. Glossop visited an adjoining back yard, where lived a woman who occasionally did a bit of 'charing' for Mrs. Haden. She denied that any one was in her house; she was indignant at the proposal to let a strange gentleman inspect her bed-room; so Mr. Glossop seized a candle, and proposed to do so without her company. He had his foot on the first step, when a voice from the room above, in a resigned though tremulous tone, called out, 'It's all right, Mr. Glossop; come up.' 'Oh, Shog,' said the officer, recognising the voice, 'is that you?' 'Yes, come up,' was the reply made, as Mr. Glossop entered the room. There, in bed, lay the 'wanted' ticket-of-leaver, a well-made, desperate-looking, thick-set fellow, with huge drops of perspiration trickling down his face—this distilling process being probably the result of the minute's confab. held with the lady of the house, as at 'Shog's' side lay the woman's husband, who had doubtless rushed up stairs, on hearing the approach of the officers, and whispered into his ear, 'They're coming.' 'Shog' was carefully conveyed to Moor-street prison in a cab, as he was unable to walk. On Mr. Glossop hinting that he wished to see whether he was wounded, the captured burglar at once stripped, saying he might as well do it first as last, and then it became obvious that the police had at last got 'the right man in the right place.' Immediately under his stomach, extending over a considerable space, were shot marks, inflammation, and lacerations. Mr. Solomon, surgeon, was at once sent for, in order that the

shots might be extracted (both for 'Shog's' own relief, and to be used in evidence against him), but it was discovered that none had been left in the wounds, all of which were no more than skin-deep. A bystanding detective having remarked that there couldn't have been much powder in the pistol, 'Shog' said, very indignantly, 'If you had it in you, you'd have known whether there was much powder in it or not.' He'd as soon have been shot dead as taken, he said; 'but anyhow he'd only be lagged for life, and he'd work as little as he did before.' His name is Thomas Wotton. Both before and since his transportation he was known to the police as the leader of a most desperate gang of burglars, who make Birmingham their headquarters. And yet such a scoundrel was granted a ticket-of-leave, and allowed to retain it, in spite of the representations of Recorder and police.

'Wotton was brought before the magistrates yesterday, and an order made for his being taken to Derby.'

From the 'Birmingham Journal' of March 7, 1857.

'COMMITTAL OF 'SHOG,' THE BURGLAR.

'This now notorious character, of whose apprehension in this town we gave the particulars last week, was brought before a Bench of Derbyshire magistrates at the Greyhound Inn, Milton, on Monday last. The case was fully gone into. Mr. Nodder, the clergyman whose house was attacked, and who so gallantly repulsed the gang, was of course the chief witness. He could not swear that 'Shog' was the man at whom he fired the pistol, but he strongly believed that he was. One point of identity was, that he aimed at the burglar's abdomen, not wishing to kill him; and it will be remembered that here the shot wounds were found. Mr. Nodder also said that he fired in a direction somewhat oblique; and Mr. J. V. Solomon, surgeon, of Birmingham, proved that the nature of the wounds was indicative of this having been done. The burglar fired at was masked in a bag made of black calico, but Mr. Nodder remarked that the shape of the face was long and oval—a description exactly corresponding with that of 'Shog.' The next point of identity was furnished by the footmarks of the wounded burglar, which were traced across a field adjoining

Mr. Nodder's house. Besides the blood which accompanied the marks, one footfall was light, the other heavy, indicating a wounded limb, and corresponding with the injury sustained by 'Shog.' In addition to this, the marks were those of small feet, which 'Shog's' are. In the next place, Mr. Ogden, a butcher, proved that 'Shog' was the wounded man whom he saw lying by the side of the road that morning, and to whom he gave a ride for several miles, and other witnesses traced him from Chesterfield to Birmingham, where he arrived in the course of Saturday. A cabman plying at the New-street station proved taking him to Mrs. Haden's, 29, Duddeston-row. He was very lame, and had to be assisted into the cab. He seemed to be suffering excruciating agony, which he told the cabman was caused by a sudden attack of gout, though it will be recollected he told the butcher that he had been illused by some men who robbed him. Then came a most important piece of evidence. The station-master at Saltley, near Birmingham, proved that on the morning preceding the night when the robbery was committed, 'Shog,' and four other men proceeded from the station to Derby by the third-class train. They asked for their tickets separately, but he saw them all in communication on the platform afterwards, and knowing 'Shog' and two others of the five to be men of bad character, he remarked to the guard of the train when it arrived, 'There's surely something up in the north.' This guard also proved that 'Shog' was one of the men, all of whom left the train at Derby. Of course, with such a chain of circumstantial evidence, the magistrates had no hesitation in committing him to take his trial at the assizes. He was not defended by any attorney, nor did he put any questions to the witnesses; but when the Saltley station-master gave his evidence, he seemed somewhat 'taken aback,' and tried to browbeat him by adjurations to tell the truth. Though not given in evidence, it was mentioned in Court, that about a fortnight ago 'Shog' was seen in the neighbourhood of Ashover, ostensibly engaged in selling brushes, though he was of course engaged in a reconnoitre of Mr. Nodder's premises. Though we knew last week that the whole gang went from Birmingham, we thought it well to abstain from noticing the fact. The Saltley station-master, however, has put the matter beyond doubt; and we may state that 'Shog' was not

the only one of the gang who sustained injury; another of them had a portion of two fingers shot off.'

From 'Aris's Birmingham Gazette' of March 23, 1857.

'At the assizes at Derby, on Thursday, Thomas Wotton, alias 'Shog,' the Ashover burglar, was arraigned before Mr. Justice Wightman for breaking into the house of the Rev. J. Nodder, at Ashover, on the 20th February. The prisoner, to the surprise of most persons in Court, pleaded 'guilty.' The learned Judge, after commenting with severity on the offence, and lamenting the mistaken leniency which had liberated such a criminal on a ticket-of-leave, sentenced the prisoner to be transported for twenty-five years.'

I have already shown by the evidence of Colonel Jebb,* that the regulation of the Home Office, by which tickets-of-leave are withheld from convicts adjudged to penal servitude, was not made till more than two years had elapsed after the passing of the Act of 1853; and that that gentleman, who is the Chairman of the Directors of Convict Prisons, and consequently the officer who might expect to be first apprised of the intentions of the Home Department, was, during that whole period, in hopes that no such invidious distinction between the two classes, equally enabled by the Act to enjoy the privilege, would have been drawn.

When I wrote the passage to which I have just referred, I was quite unaware that my course in not observing a distinction not then established by the Department—opposed to the grounds on which the consent of the Legislature had been asked by the Department to their Bill, and utterly at variance both with the letter and spirit of that Bill, framed as it was in the Home Office—would expose me to rebuke; and I think it not impossible that the speech of Sir George Grey may have excited as much surprise among the gentlemen of his own Department as it did in myself. Mr. Under-Secretary Waddington thus answered two questions put to him by Mr. Adderley in the Transportation Committee:—

'241. *Mr. Adderley.*—Have not the Judges stated, at the

* *Ante*, p. 476.

time of passing sentence, that the prisoners might, as an encouragement to good conduct, receive licences?—Some have; it was a mistake, undoubtedly; it has not been frequent. There have been some such cases, I believe; and it has excited hopes, no doubt, in the convict to whom it has been addressed.

‘242.—Have any sentences been mitigated since?—A great many sentences have been mitigated, not owing to representations held out to the convict, but owing to a mistake on the part of a learned Recorder; a natural mistake, for which I am sure I do not blame him at all; he passed very extreme sentences of penal servitude in many cases, under the impression that the prisoners would have tickets-of-leave; and, upon finding that such was not the case, he very properly wrote to Sir George Grey, to beg that the sentences might be mitigated, and that has been done; but those were entirely exceptional cases, owing to a misapprehension of the learned Judge.’*

To this alleged misapprehension I was not prepared to plead guilty; *vide* my answers to questions beginning 1865 to 1874.† In answer to question 1871, I stated, in the presence of Mr. Under-Secretary Massey, ‘that I had three several times, in the course of correspondence with the Home Office on particular cases, though not suspecting that there was any doubt upon this point, brought my course of proceeding under the notice of the Home Office. I mean that I was so dealing with persons sentenced to penal servitude—namely, dealing with them upon the footing that they had the same opportunity of working themselves out of prison by good conduct as persons sentenced to transportation.’

The correspondence to which I referred will be found *in extenso* in the appendix to the 2nd Report, p. 175. I subjoin two extracts:—

‘I will now, Sir [George Grey], with your permission, support my reading of the statute by reference to the views of its meaning taken in Parliament. The Bill being in Committee in the House of Commons, Sir John Pakington said he ‘would suggest the substitution of the words ‘period of imprisonment’ for ‘penal servitude,’ because if by the latter words the Govern-

* First Report Transportation Committee, House of Commons, 1856. p. 23.

† Second Report Transportation Committee, House of Commons, 1856. p. 15.

ment meant to distinguish that punishment which was to be a substitute for transportation, then larceny, which could not be punished with transportation, would not be brought within the scope of the Bill.'

'Viscount Palmerston said 'the object of the Government was this, they did not intend to touch the law by which a confinement within the walls of a prison was awarded for a certain limited period not exceeding three years, but to deal simply with sentences of transportation, which constituted a different punishment altogether. If Parliament should think it right to deal with sentences of imprisonment, it might do so, but that would require a separate measure.'

'Here, Sir, you will be pleased to observe that Sir John Pakington and Lord Palmerston both agree in drawing the distinction as to the capacity for claiming a ticket-of-leave between convicts sentenced to imprisonment, on the one hand, and those sentenced to transportation and penal servitude, on the other. Sir John Pakington thought the Bill ought to be so altered as to make all the three classes capable of enjoying the privilege; but both gentlemen evidently agreed, that even as the Bill then stood, penal servitude was clearly within the pale.

'Sir John Pakington, as you are doubtless aware, has long filled the office of Chairman at the Quarter Sessions for Worcestershire, and it occurred to me a few months ago to be present when a noble and learned Peer pronounced a public eulogy on that gentleman for his extensive knowledge of the criminal law.

'Permit me also to invite your attention to the following passages extracted from the debate on the third reading of the same Bill.

'*Mr. Keating said there were several clauses in the Bill which deserved the careful consideration of the House. He would refer more particularly to those clauses by which it was provided that the Secretary of State should give tickets-of-leave to such criminals as should have a sentence of penal servitude at home substituted for a sentence of transportation. There could be no difference of opinion as to the propriety of doing everything which could be done, to effect the reformation of the criminal. At the same time, they should bear in mind*

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that that was not the only object for which punishment was awarded. One great object of punishment was to deter others from the commission of similar crimes. Now, in his opinion, those clauses, introducing, as they did, a novel system into the criminal procedure of this country, ought to be well considered by the House before they were enacted.'

* * * * *

'Viscount Palmerston said he was not surprised that the honourable and learned gentleman, who had probably not attended to the discussions which had already taken place upon the Bill, should be struck with the novelty of the proposed arrangement. He could, however, assure the House that the subject had received the most deliberate consideration from persons much more competent to deal with it than he could profess to be, and it had been thought that the new system would be attended with considerable advantage to the country as well as to the criminals themselves. The practice had hitherto been, after a certain period of preliminary imprisonment, and a certain period of employment upon public works, to send convicts to a penal colony under that system of qualified servitude which was called the ticket-of-leave system. The hope of obtaining that indulgence had been found to have a very powerful effect upon the mind of convicts confined in prisons and employed upon public works, and had tended greatly to produce resignation to their condition, and a determination to adopt that good conduct which would entitle them in course of time to participate in the same indulgence. Now, as the great object of punishment for offences not of the gravest character, was the reformation of the criminal and the example to others, he thought it would be not only unwise but undesirable *that when transportation ceased, there should with it cease that element of hope which was so important a feature in prison discipline. There appeared to be no other mode of preserving that element of hope than by adopting that ticket-of-leave system which had proved so beneficial in our penal colonies.*

'Thus, Sir, you will perceive that Mr. Keating, a gentleman of eminence at the bar, one of Her Majesty's Counsel, reads the Act precisely as I read it, and that his construction meets with the assent of Lord Palmerston, as might be expected, after

what had occurred between the noble lord and Sir John Pakington, on a former debate. With regard, however, to Lord Palmerston, I have more to say. As, then, filling the office which you now hold, his construction shows not only what was the legal operation which it was at that time considered by the department the Bill would have upon convicts sentenced to penal servitude, but it shows that such legal operation was in conformity with the views of its framers; otherwise the legal effect for which I contend being at that period admitted on all sides, the language of the Bill would have been changed and brought into accordance with the opinion which the department now holds. On this point, however, I will put you into possession of evidence which places the opinion of Lord Palmerston beyond all doubt.

‘ In the cases of E. S., J. H., and W. T., referred to me by the noble lord while he held the seals of the Home Department, I three several times reminded him that if he should think right to mitigate the punishment of the convict, he could do so without disturbing the judgment as pronounced, because, I said, under a sentence of penal servitude the Crown has the power of issuing a licence which would release him from prison at any moment. Lord Palmerston, it is true, did change the sentences in each case; but the answers apprising me of what had been done were in the usual form, conveying no intimation of the reasons upon which my suggestions had been rejected. Now, Sir, I cannot doubt that, upon my thus disclosing to his lordship my construction of the statute, he would, if it had militated against the construction adopted in the office, have warned me that I had fallen into an error, and was acting on expectations as to the future treatment of the prisoners which could produce nothing but disappointment. I may add, that upon reference to my letter in the case of E. S., dated 27th January, 1854, it will be seen that I detailed so minutely my practice with regard to sentences of penal servitude, and the expectations which I held out to the prisoners, as to challenge the especial attention of the department to the course pursued.’*

* Second Report Transportation Committee, House of Commons. App. p. 177.

And again, in a subsequent letter to Sir George Grey, I write as follows :—

‘ Let me then request you to observe the position in which this long series of judgments now stands :

‘ 1. They are in conformity with the law.

‘ 2. They are in furtherance of the views on which the measure of 1853 was proposed by Ministers to Parliament, and to which, by the passing of the Act, the Legislature gave its sanction.

‘ 3. The interpretation of the Act on which these judgments were based was made known to the department with great particularity at a very early period, and no exception having been taken to the course pursued, the sanction of the department must be added to that of the Legislature.’*

Surely if, in the opinion of the Home Office, I was not warranted in thus claiming the sanction of the department for what I had done, that claim should have been met and answered ; whereas neither in that correspondence, nor when I was before the committee of which Mr. Massey was a member, nor at any other time down to Sir George Grey’s speech in February, 1857, were the facts of the case presented in any other light than that in which I have laid them before the reader.

From ‘Aris’s Birmingham Gazette’ of April 6th, 1857.

‘ THE RECORDER’S CHARGE.

‘ Before I consent that men should do what they please, I should like to know what they will please to do.’—*Burke.*

‘ The preceding sentence, applied to criminals, formed the key-note of the valuable Charge delivered on Monday by the Recorder. Reviewing the history of the Ticket-of-leave Act, he pointed out the errors in its administration, condemned the alterations proposed to be made in it by Sir George Grey, and laid down a doctrine for which we have more than once contended—that it is useless to liberate a criminal until proof of his reformation is obtained. The Home Secretary despairingly admits that under the present system a convict is liberated on

* Second Report Transportation Committee. App. p. 180.

a ticket-of-leave without the slightest proof that the reformatory process has even commenced. He is released just on the same principle as that on which a man allows a savage dog to escape—because he is tired of holding him. It is thus with the criminal. The prisons are not large enough to hold the number of criminals properly sentenced to long terms of imprisonment—the colonies refuse to receive convicts at all; and therefore the ticket-of-leave system was invented to free the prisons by liberating those prisoners whom it was inconvenient longer to retain. Criminals sentenced to penal servitude—a kind of concentrated transportation—are excepted from the operation of the Act, consequently they become mutinous, and less open to reformatory influences. A further development of the law being found necessary, Sir George Grey proposes to extend the privilege of conditional pardon to penal servitude men, as well as to those sentenced to transportation. In principle, no doubt, the Home Secretary is perfectly right, but the scheme fails in practice, because the Minister consents that men shall do what they please, without stipulating for a prior knowledge of what they may please to do. Good conduct in prison is sufficient to obtain for the most hardened criminal the virtual remission of half his sentence; and yet good conduct in prison does not, in the remotest degree, afford a proof of reformation. Men notorious for their good behaviour in prison have walked straight from the gaol-door to their old haunts, and, before the lapse of many hours, have resumed their criminal habits. Had these men been fairly tested, their tickets-of-leave would have been withheld; and if society is to be protected, a test must be introduced severe enough to afford a reasonable hope of the criminal's ultimate reformation. At present the conduct of the Government is only paralleled by that of the cutler who forged a sword-blade, polished it, laid it carefully by, but dared not put it to the test of a blow, lest the absence of tempering should reduce the weapon to the valueless condition of broken iron. The useless sword is a fair type of the ticket-of-leave convict. While in prison, his life is regulated by very simple rules, obedience to which constitutes good conduct, and on such good conduct tickets-of-leave are granted. Naturally, the liberated criminal reverts to his old habits, and either as a practised garrotter or a desperate burglar, scatters terror through a whole

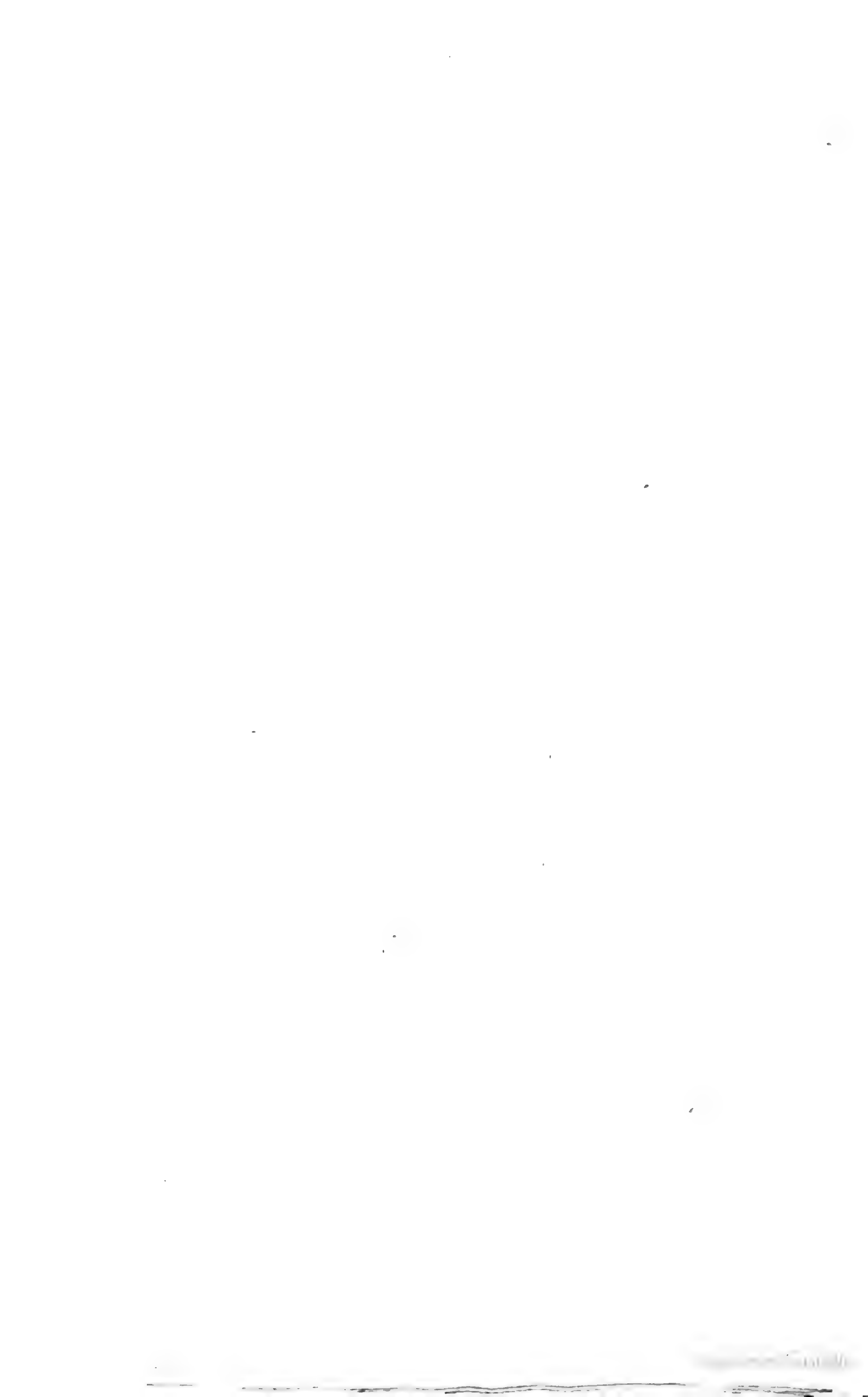
district, the law meanwhile being utterly powerless for prevention. How forcibly is this illustrated by the history of the burglar Wotton ! He was a ticket-of-leave man known to be still pursuing criminal habits ; the Secretary of State was called upon to revoke the licence ; he refused, and the Ashover burglary was the result. Well may the Recorder exclaim—

* * * * *

‘ ‘ If the science of jurisprudence can do nothing better for us than all this, it has little more claim on our respect than the so-called science of astrology.’

‘ But the science of jurisprudence *can* help us, if properly applied. All that is wanted is an enlargement of the test on which tickets-of-leave are granted. Instead of making that test a simple observance of prison rules, let the candidate for liberation really work out his own freedom by proving that he can resist temptation. Let him be passed through different stages of trial—in solitude, in association, in almost unrestricted freedom—and let his conduct under these circumstances determine the period at which his punishment shall cease. Let him know also that his licence will be revoked on proof that he is associating with thieves, although no actual crime can be alleged against him. Let these provisions be administered wisely and firmly, and we shall diminish by at least three-fourths the number of ticket-of-leave men who resume predatory habits. It is idle to say that such tests cannot be applied. The best answer is that such a system has worked and is working well. Montesinos, in the very worst among the bad Spanish prisons, proved that he could successfully pass hardened criminals through a course of reformatory training. In Bavaria, Obermaier still affords proof of the same great truth. In Ireland, Captain Crofton is able to obtain similar results. What, then, is to hinder England from emulating these examples ? It is evident that during the next session of Parliament the whole subject will undergo discussion ; until that time arrives we reserve further remarks. We cannot, however, refrain from thanking the Recorder for having again called attention to the anomalous condition of the law. It is important that changes in the law should begin by being made popular, the value of criminal jurisprudence consisting in its harmony with public feeling. When a change is required in public opinion as a

precursor to an improvement of the law, it cannot more naturally begin than by principles being laid down from the Bench, to be canvassed in the jury chamber, and to be disseminated to the widest possible extent through the medium of the press. And while incalculable good may result from the adoption of this course, no harm can possibly arise; for if the Judge errs either in principle, or because the public mind is not sufficiently prepared for new doctrines, he simply fails to attract the measure of attention necessary to success, and in a month the charge is forgotten.'



INDEX.

ABERDEEN, Feeding Schools at, [360](#)
 children committed for crime at, [361](#)
 Absolute discharge of prisoners, [620](#)
 Abstinence from intoxicating drinks desirable, [399](#)
 voluntary universal abstinence not to be expected, [400](#)
 legislative interference needful, [400](#)
 Account of reformatory at Stretton-on-Dunsmore, [52](#)
 number of boys sent from Birmingham, [54](#)
 Adams, Mr. Serjeant, [223](#)
 Addendum to Charge of January, 1855, [389](#)
 Adderley, Mr. *C.B.*, [255](#), [345](#), [489](#)
 letter from author to, [276](#)
 Alcoholic drinks, cost of, [387](#), [394](#)
 medical opinion of, [392](#)
 excess in use of difficult to avoid, [396](#)
 dealers in should consider that their trade may pass from them, [411](#)
Amelia, extracts from, [459](#)
 Amicus, letter from, to the *Times*, [167](#)
Annual Register, extract from, concerning burglaries in 1850, [149](#)
 cruelties at Birmingham Gaol, [232](#)
 Arbitrary power, evils of, [633](#)
Aris's Birmingham Gazette of March [23](#), 1857, extract from, [687](#)
 of April [6](#), 1857, extract from, on Charge of March, [1857](#), [692](#)
 Arnold, Dr., [58](#)
 Arsenic, [32](#)
 Ashover burglary, [678](#)
 Association of London Bankers, [43](#)
Atto di accusa, [19](#)
 Austin, Lieutenant, [232](#)
 Average length of imprisonments, [624](#)

BACON, Lord, [113](#), [439](#)
 Bail for good conduct, [155](#), [169](#), [174](#), [186](#), [205](#), [209](#), [211](#), [213](#), [222](#), [229](#), [468](#)
 Baines, Right Hon. M. T., letter to, from author, [543](#)
 Baker, Mr. Barwick, [356](#), [366](#)
 Baths and washhouses at Liverpool, [86](#)

Bavaria, discharged prisoners, how treated in, [569](#)
 Patronage Societies in, [569](#)
 perpetual imprisonment in, [524](#)
 punishments awarded in, [568](#)
 Beccaria, [279](#), [291](#)
 Bengal, law in action in, similar to one proposed by author, [158](#)
 Bentham, Jeremy, [35](#)
 denounced the hulks, [475](#)
 Beranger, M. de, [532](#), [659](#)
 Bickersteth, Mr. (afterwards Lord Langdale), [14](#)
 Bill to amend Ticket-of-leave Act, [651](#)
 Birmingham Discharged Prisoners' Aid Society, [276](#); special meeting of, [599](#)
 letter from author to editor of the *Times* respecting, [604](#)
 Birmingham Gaol, [232](#); Andrews, J., prisoner in, *ib.*; Austin, Lieut., governor of, *ib.*; Blount, Mr., surgeon at, [236](#); Brooks, J., warder at, [235](#); Brown, William, warder at, [233](#); commission to inquire into cruelties at, [232](#); Frear, T., warder at, [234](#); Hartwell, D., messenger at, [236](#); Hunt, *S.*, prisoner in, [236](#); laying first stone of, [101](#); punishments at illegal, [235](#); salt forced into mouths of prisoners at, [237](#); sentences passed on governor and surgeon of, [238](#); Sherwin, Rev. A., chaplain to, [234](#); suicides at, [235](#); Wood, Mr. J., school-master to, [235](#)
Birmingham Journal of October [13](#), 1855, extract from, [143](#)
 of October [12](#), 1850, [146](#)
 of October [13](#), 1855, [482](#)
 of February [25](#), 1857, [683](#)
 of March [7](#), 1857, [685](#)
 of January, [14](#), 1857, letter in, [641](#)
Birmingham Mercury of October [25](#), 1851, article from, [210](#)
 of March [7](#), 1857, extract from, [681](#)
 Birmingham police, excellence of, [9](#)
 Birmingham, rate of mortality at, [315](#)

- Birmingham, drunkenness cause of disease at, [319](#); localities where connexion is obvious between disease and crime, [320](#)
public-houses in, [603](#)
riots in [1839](#), [1](#)
ticket-of-leave men in, [590](#); list of, [596](#)
- Blackstone, [28](#)
- Blanchard, Mons., letter from, [130](#)
- Blount, Mr., surgeon of Birmingham Gaol, [236](#)
- 'Book of Sports for the Poor Man,' [83](#)
- Boutwell, Hon. George, letter from, [415](#)
- Bracebridge, Mr. C. [H.](#), [255](#)
- Bristol Branch of Association for improving the Dwellings of the Industrious Classes, [326](#)
meeting of National Reformatory Union at, [346](#)
model lodging-houses at, [326](#)
Ragged School Union, [362](#)
ticket-of-leave-men in, [591](#)
- Brougham, Lord, [19](#), [346](#), [444](#)
on the inefficacy of simply penal legislation, [294](#); on the Hulks system, [476](#)
his Judicial Statistics Bill, [593](#)
- Brougham, Mr. James, [346](#)
- Burdett, Sir Francis, [14](#)
- Burglaries in 1850, [149](#)
- Burglary at Ashover, [678](#)
at Great Hampton Street, Birmingham, [146](#)
at Mr. Holford's, [191](#)
at Manchester, [150](#)
at Manningtree, [150](#)
- Burt, Rev. John, [276](#)
- Bushrangers in Tasmania, [641](#)
- 'CALEDONIAN MERCURY' of April 4th, 1857, extract from, [671](#)
- Calthorpe, Lord, [345](#)
- Cambridge, Duke of, [517](#)
- Campbell, Mr. George, [157](#)
- Canning, Elizabeth, [21](#)
- Capital punishment for forgery, [43](#)
- Carpentaria, Gulf of, [608](#); suitability of for a penal colony, doubtful, [630](#)
- Carpenter, Miss Mary, [342](#), [346](#), [356](#)
extract from paper by, read at Bristol, [363](#)
- Certainty of punishment far from attained, [6](#)
- Chadwick, Mr. Edwin, [299](#)
- Chance, Mr. William, [265](#), [271](#)
- Chaplains of prisons, [184](#), [471](#)
have no undue influence in procuring remission of sentence, [519](#)
- Charge of July, 1839, [2](#)
of May, 1840, observations on, [46](#)
of April, 1841, [52](#)
- Charge of January, 1845, [64](#)
of October, 1845, [71](#)
of March, 1847, [107](#)
of April, 1848, [112](#)
of October, 1848, [117](#)
of April, 1850, [135](#)
of October, 1850, [151](#)
of October, 1851, [180](#)
of October, 1853, [238](#)
of March, 1854, [299](#)
of September, 1854, [335](#)
of January, 1855, [372](#)
of April, 1855, [439](#)
of October, 1855, [462](#); opinions set forth in opposed by *Times*, [478](#); *Examiner*, [493](#); *Inquirer*, [496](#); *Era*, [505](#); *Morning Chronicle*, [508](#)
approved by *Birmingham Journal*, [482](#); *Globe*, [484](#); *Spectator*, [487](#); *Weekly Dispatch*, [500](#); *Daily News*, [512](#)
of October, 1856, [529](#)
of December, 1856, [610](#)
of March, 1857, [651](#)
article upon, from *Aris's Gazette* of April 6th, 1857, [692](#)
- Charity, [76](#)
- Charter of Incorporation for Birmingham, [4](#)
- Chartists in April, 1848, [112](#)
- Chartists in Birmingham, [1](#)—[12](#)
- Chatham, Lord, [666](#)
- Cheap concerts, [83](#)
- Checks to crime, [72](#)
- Chesterton, Mr., on Captain Maconochie, [271](#)
hope as a reformatory agent, [585](#)
perpetual imprisonment, [522](#)
- Clarke, Mr. Andrew, [87](#)
- Class who pursue crime as a calling, [71](#), [52](#), [177](#)—[9](#), [200](#), [204](#), [213](#), [327](#)
- Clay, Rev. John, [345](#), [387](#)
on effect of good or bad times on committals to prison, [415](#)
- Cochrane, Mr. Baillie, on prison at Munich, [544](#)
- Code Napoleon, [20](#)
- Coke, Lord, [26](#)
- Colons at Mettray, number of, [120](#), [131](#); medal commemorative of their gallant conduct, [134](#)
- Combe, Mr. George, [48](#)
- Commission proposed to inquire into subject of law reform, [519](#)
- Committee on juvenile offenders, House of Commons, 1852, [344](#)
- Common Lodging Houses Act, [304](#), [324](#)
- Comparison of number of forgeries committed, with convictions, [42](#)
- Conference at Birmingham, 1851, [342](#)
resolutions adopted, [343](#)
1853, [344](#)

- Conkey Beau, [219](#)
 Constabulary force, report of commissioners on, [7-42](#)
 Convictions for forgery compared with number of forgeries committed, [42](#)
 number of, no index to number of offences, [7](#)
 Convicts may be employed on public works at home, [175](#), [617](#), [649](#)
 cost of, at Dartmoor, [649](#)
 Portland, [649](#)
 in Tasmania, [618-649](#)
 Western Australia, [618-649](#)
 Corfield, Miss Martha, [276](#)
 Cornish miners, [279](#)
 Correspondence between author and Sir George Grey, extract from, [688](#)
 Cosham, Mr. Handel, [346](#)
 Cost of convicts at Dartmoor and Portland, [649](#)
 Tasmania and Western Australia, [618-649](#)
 criminals at large, [128](#)
 witnesses in Belgium paid by the public, [5](#)
 witnesses in France when paid from public fund, [20](#)
 Counterfeit coin, uttering of, [46](#)
 how made, [46](#)
 materials used, [47](#)
 Court of Requests at Birmingham, [446](#)
 disgraceful state of prison attached to, [455](#); letter from author to Sir J. Graham describing, [456](#); answered, [458](#)
 Courteilles, Vicomte de, [120](#)
 Crank, [250](#)
 Crime in 1850 and 1851, [611](#)
 in 1855 and 1856, [653](#)
 in Edinburgh, [669](#); causes of, [109](#); checks to, [75](#); cost of in London, [327](#); diminished by operation of Maine Law, [424-5-6-7-8-9](#), [430-1-4](#); incapacitation from, [626](#); increase in partly attributable to reduction in army and militia, [631-654](#); means for repression of, [9](#), [161](#), [328](#); perseverance in, [201](#); pursued as a calling, [7](#), [152](#), [327-8](#); repression of, the true end of punishment, [622](#), [646](#)
 temptations to, in Birmingham, [603](#)
 more frequent in winter than in summer, [611](#)
 Criminal code, former severity of, [462](#); mitigated of late years, [204](#), [614](#), [638](#)
 statistics in France, accuracy of, [592](#)
 Criminals below the average in intellect, [48](#)
 may defray cost of imprisonment, [466](#)
 discharged unreformed, [260-1](#), [614](#), [655](#)
 Criminals when discharged unable to find employment, [632](#)
 habits of great, [666](#)
 necessity of keeping at home recognised by Government, [667](#)
 identification of, [537](#), [594](#)
 impunity of, [8](#), [182](#)
 labour appropriate for, [175](#), [617](#), [649](#)
 cost of when at large, [128](#)
 misplaced sympathy with, [211](#), [622](#)
 recklessness of, [48](#)
 should be detained in prison till reformed, [520](#)
 treatment of, [103](#)
 well known to police, [152-6](#), [162](#), [230](#)
Crime: Its Amount, Causes, and Remedy, by F. Hill, quoted, [244-7](#)
 Crofton, Captain, [346](#), [657](#); evidence of, [563](#); system pursued by him at Smithfield Penitentiary, [586](#), [672](#)
 'DAILY NEWS,' October [19](#), 1855, article from, [512](#)
 Dec. [31](#), 1856, article from, [645](#)
 Jan. [17](#), 1857, letter from author in, [623](#)
 Dalton, the Bushranger, [642](#)
 Dartmoor, cost of convict at, [649](#)
 Degrading discipline, evil effects of, [14](#)
De la Repression Pénale; de ses Formes et de ses Effets, [659](#)
 Demetz, M., [55](#), [120](#), [356](#), [470](#), [480-7-9](#), [491](#)
 communication from, [128](#)
 on French criminal statistics, [592](#)
 Denman, Lord, [461](#)
 Deterrents, inefficiency of, [46](#), [242](#), [260](#), [266](#), [274](#); treated of in letter to C. B. Adderley, Esq., M.P., [276](#); why believers in deterrents should advocate reformatory treatment, [627](#)
 Digby, Wriothsley, [347](#)
 Dillon, Mr., [623](#)
 Diminution in number of offenders, [151](#)
 Diminution in number of pardons annually granted in France, effect of, [659](#)
 Discharged Prisoners' Aid Society in Birmingham, [276](#), [543](#); author's speech at meeting of, [599](#)
 how treated in Bavaria, [569](#)
 how treated in Spain, [577](#)
 Disease and crime, connexion between, [300](#)
 localities in Birmingham where their connexion is obvious, [320](#)
 Dow, Hon. Neal, [425](#)
 Draft Report on principles of punishment, [522](#)
 Drainage, effects of bad, [302](#)
 Dramatic entertainments, [82-4](#)
 Drunkenness a cause of disease, [319](#)

- Drunkenness, Ragged School pupils victims of, [364](#)
 Dublin Castle, Camden Town, plundered, [150](#)
Dublin Daily Express, Dec. [4](#), 1856, extract from letter from Mr. P. J. Murray in, [677](#)
 Dunne, Mr. J., Chief-constable, Newcastle-upon-Tyne, letter from, [358](#)
 Dwellings of the poor, [211](#), [300](#), [320](#)
 Dyson, William, [191](#)
- EASTERN PENITENTIARY** at Philadelphia, [248](#)
 Edinburgh, crime in, in 1856, [669](#)
Edinburgh News of January [10](#), 1857, extract from, [669](#)
Edinburgh Review, 1826, extract from, [36](#)
 October, 1854, extract from, [227](#)
 Education, [9](#)
 regarded by *Morning Advertiser* as the sole means for the diminution of crime, [225](#)
 in factories, [78](#)
 Effect of good or bad times on committals to prison; opinion of Rev. John Clay, [415](#); of Dr. Walsh, [437](#); of the author, [438](#)
 Ellis, John, Mr., [255](#)
 Embezzlement, [71](#)
 Employers and employed, relation between, [77](#)
 England almost the only country which resorts to transportation, [618](#)
Englishwoman in America, extracts from, [370](#)
Era, October [14](#), 1855, article from, [505](#)
 Erskine, Lord, [186](#)
 Evidence before Transportation Committee of House of Commons, 1856, of author, [523](#), [688](#)
 Jebb, Colonel, [476](#)
 Waddington, Mr. Under Secretary, [525](#), [687](#)
 of Mr. Holford's servants, &c., [191](#)
Examiner, extracts from, October [19](#), 1850, [191](#)
 Oct. [26](#), 1850, [194](#); Oct. [13](#), 1855, [493](#)
 Expense of prosecutions, [5](#)
 Exposing goods at shop doors, [75](#), [349](#)
- FALKLAND ISLANDS** unsuitable for a penal colony, [633](#)
 Fallaciousness of criminal statistics, [7](#)
 Family principle, [121](#), [356](#)
 Fenning, Eliza, [32](#)
Few Remarks on the Convict Question, by Captain Crofton, [585](#)
- Field, Rev. John, [215](#)
 Fielding, Henry, Life of, [21](#)
 Fines, [18](#)
 Firearms, two innocent persons killed in consequence of use of, [189](#)
 use of, in self-defence, recommended by *Examiner*, [196](#)
 Flood of the Loire in 1856, [133](#)
 Forbes Mackenzie's Act, [435](#), [671](#)
 diminution of drunkenness and crime, [43](#)
 Forçats, effect on, of diminution in annual number of pardons granted in France, [532](#), [659](#)
 Forged bank-notes, [7](#), [42](#)
 France, accuracy of criminal statistics in, [592](#)
 Frequenting a place with criminal intent, [154](#)
 Freshfield, Messrs. J. C. & H., [45](#)
 Frimley, burglary at, [150](#)
 Frome, outrage near, [189](#)
 Frost, John, on transportation, [634](#)
- GAOL** at Birmingham (*see* 'Birmingham Gaol'), laying first stone of, [101](#)
 Gardner, Mr. (Governor of Bristol Gaol), photographs his prisoners, [593](#)
 Gascoigne, Sir Crisp, [24](#)
Gentleman's Magazine, extract from, [23](#)
Glimpses of Spain, by S. T. Wallia, extract from, [559](#)
Globe, Oct. [13](#), 1855, article from, [484](#)
 Glossop, Inspector, [148](#), [276](#), [683](#)
 Godwin, Mr. George, [320](#)
 Golden Bridge Reformatory, [675](#)
 Goulbourn, Mr. Serjeant, [38](#)
 Governor of a gaol, qualifications for, [252](#)
 Grand Juries, functions of, [10](#)
 Charge upon, [439](#)
 their jurisdiction, [441](#); superseded, [442](#); when mischievous, [444](#); proposed change in their functions, [447](#); opinion of the Grand Jury addressed respecting, [449](#); observations on, by Mr. Oakley, [451](#); *Inutility of Grand Juries*, [461](#)
 address of, October, 1856, [543](#); March, 1857, [669](#)
 advocates reformatory treatment, [191](#)
 Grange Gorman prison, [675](#)
 Great Exhibition of 1851, [18](#)
 Grey, Earl, on tickets-of-leave, [534](#)
 on influence of hope in treatment of criminals, [659](#)
 Grey, Sir George, on tickets-of-leave, [540](#), [655](#)
 dissatisfied with results of present system of prison discipline, [656](#)
 speech on bill to amend Ticket-of-leave Act, [653](#)

- Grey, Sir George, letter to the author respecting ticket-of-leave men in Birmingham, [665](#); regards a satisfactory test of reformation impossible of attainment, [667](#); comments on course pursued by the author respecting persons sentenced to penal servitude, [668](#)
- HALL, Mr. Robert, [27](#)
Hansard's Debates, extracts from, [653-6](#), [661-3](#)
 Harbours of Refuge, want of, [617](#)
 Harrowby, Earl of, [345](#)
 Heely, Christopher, [148](#)
 Heely, Miss, statement of, [681](#)
 Herapath, Mr. Thornton J., [33](#)
 Hill, Mr. Alfred, [346](#); extract read at Bristol from paper by, [360](#); letter from, [672](#)
 Berkeley, letter from, [33](#)
 Frederic, [323](#), [346](#); on prison discipline, [244](#); prison visiting, [247](#); perpetual imprisonment, [521-4](#)
 M. D., evidence before Prisoners' Defence Bill Committee, House of Lords, 1835, [29](#); before Transportation Committee, House of Commons, 1856, [523](#), [688](#)
 Hilyard, Mr., Governor of Birmingham Gaol, [275](#)
 Hodgson, Mr. Joseph, [50](#)
 Holderness, Rev. William, on penal servitude, [534](#)
 Hollest, Mr., [160](#), [608](#)
 Hone, Mr. William, [35](#)
 Hope, a necessary element in reformatory treatment, [534](#), [600](#); Mr. Chesterton's opinion, [585](#); Earl Grey's, [659](#); evil effect of depriving prisoners of hope, [532](#), [659](#)
 Hoskins, Mr. G. A., on the prison at Valencia, [552](#)
 Howard, John, [105](#), [257](#)
 Howitt, Mr. William, [648](#)
 Hulks denounced by Jeremy Bentham, [475](#)
 by Lord Brougham, [476](#)
 Hume, Mr. Joseph, letter from, to Captain Maconochie, [274](#)
 Hunt, Mr. Leigh, [14](#)
- IDENTIFICATION of criminals, difficulty of, [537](#)
 by means of photographic portraits, [593](#)
- Imprisonment with labour, almost our only form of punishment, [624](#); term of, becoming shorter, [184](#); length of, should be determined by reformation of the prisoner, [522](#)
- Imprisonment for life, [624](#) (*see also* Perpetual Imprisonment); when necessary, [521](#), [616](#); contemplated by Government, [653](#), [667](#)
 Imprisonments, repeated, evils of, [350](#)
 Impunity of criminals, [7](#), [8](#), [182](#)
 Incapacitation from crime, [626](#)
 Incendiary fires at Birmingham, [11](#)
 Inciting to murder, [198](#)
 Incurable offenders, necessity for perpetual imprisonment of, recognised by Government, [653](#), [667](#)
 Increase of crime, doubtful, [646](#)
 Indian Thug, [182](#)
 Industrial Feeding Schools, [343](#); in Aberdeen, [360](#)
Inefficacy of simply Penal Legislation, by Lord Brougham, [294](#)
 Innocent persons, instances of verdict of guilty against, [187](#)
 killed in consequence of use of fire-arms in self-defence, [189](#)
Inquirer, Oct. [13](#), 1855, article from, [496](#)
 Intemperance a bar to moral and physical improvement, [325](#)
 consequences of, [373](#), [387](#)
 crime produced by, [395](#), [420-2](#)
 Intermediate prison, [672](#)
 stage between imprisonment and liberty, importance of, [631](#)
 Intoxicating liquors, table exhibiting sale of, in United States, [412](#)
 in British America, [414](#)
 money spent in, [388](#)
 Introduction to Charge of July, 1839, [1](#)
 October, 1850, [146](#)
 October, 1853, [232](#)
 January, 1855, [367](#)
 December, 1856, [610](#)
- JANSSEN, Sir S. T., [654](#)
 Jardine, Mr., [469](#), [515](#), [516](#)
 Jebb, Colonel, evidence of, before Transportation Committee, respecting penal servitude, [476](#)
 letter respecting tickets-of-leave, [518](#)
 Jeffreys, Judge, [30](#)
 Johnson, Dr. [373](#), [390](#)
 Jury, trial by, when introduced in Birmingham, [4](#)
 Just administration of the law, [6](#)
 Justices of the Peace, [107](#), [258](#)
 Juvenile offenders, [108](#), [183](#), [208](#)
 cases of [14](#), at Liverpool, [127](#)
 Committee, House of Commons, 1852, [344](#)
 number committed at Aberdeen, [361](#); at Bristol, [362-6](#)
 reformatory treatment of, [267](#)
 returned to parents or employers, [118](#), [351](#), [601](#); register of those so returned kept at Birmingham, [351](#)

Juvenile Offenders' Act, 17th & 18th Vict.,
explained, [336](#), [345](#)
as amended, [345](#)

KAISERSLAUTERN, [549](#)

Keating, Mr., in debate on Ticket-of-leave Bill, [689](#)
his construction of the Act accords with the author's, [690](#)

Kinnaird, Hon. Arthur, [345](#)

Knacker's yard at Birmingham, [447](#)

Knight, Mr. Charles, [388](#)

LABOURING CLASSES' Lodging House Act, [309](#); endeavour to bring it into operation at Bristol, [326](#)

Landlords should be made responsible for respectability of their tenants, [67](#), [327](#); proposal for effecting this, [332](#); their interest to annihilate the predatory class, [330](#)

Large number of offences never detected, [7](#), [42](#)

Law, just administration of, [6](#)

Laying the first stone of Birmingham Gaol, [101](#)

Leamington Spa Courier of April 5th, 1855, extract from, [346](#)

Lees, Dr. Frederic, on operation of the Maine Law, [423](#)

Legislative interference, evil results of, [323-4](#)

when useless, [391](#)

as regards sale of intoxicating drinks, already in existence, [374](#)

Leipner, Mr., [544](#)

Lentaigne, Mr., [672](#)

Letter from author to C. B. Adderley, Esq., [276](#)

to Right Hon. Talbot Baines, [543](#)

to *Daily News*, [623](#)

to *Times*, [604](#)

Lewes' *Life of Goethe*, extract from, [293](#)

Liberated convicts, increase in number of, [185](#)

Liberty of the subject interfered with, [211](#), [223](#)

'Liberty, Equality, Fraternity,' [113](#)

Licensed victuallers, [410](#)

Licensing marine store dealers, [69](#)

Life of Fielding, by Frederic Lawrence, [21](#)

Liverpool, baths and wash-houses at, [86](#)

cases of [14](#) young offenders at, [127](#)

local act in, regulating licences to marine store dealers, [69](#)

petition from magistrates of, [127](#)

public-houses in, [94](#)

Liverpool Life, extracts from, [84](#)

Liverpool Mercury, October 28th, 1851, extract from, [221](#)

Locke, John, [410](#)

London Bankers' Association, [43](#)

London police sent to Birmingham, [2](#)

London Shadows, extracts from, [320](#)

Lovett, Mr., [12](#)

Lyndhurst, Lord, [25](#), [39](#)

Lyttelton, Lord, [345](#)

MACONOCHE, Captain, [175](#), [217](#), [232](#), [239](#), [489](#)

letter to, from Rev. T. B. Naylor, [273](#); Mr. Joseph Hume, [274](#); his opinion that it is more hopeful to reform adults than juveniles, [471-4](#); his services, [473](#); his system, [243](#), [251-7](#), [262](#), [271](#); testimonial to, [265](#)

M'Claren, Mr. Duncan, [437](#)
communication from, [671](#)

Maine Law, [367](#)

its supporters — opponents, [367](#); evasion of, [367](#); effects of, [368](#); not yet carried into full effect, [369](#); *Englishwoman in America*, on, [370-1](#); history, [382](#); not yet possible to introduce in England, [386](#), [404](#); summary of author's views upon, [389](#); progress of in America, [401](#); table exhibiting it, [412](#); objections raised against, [404](#); declared to be unnecessary when possible, [407](#); difficulties in way of, in England, [408](#); publicans influence a large number of voters, [409](#); Hon. George Boutwell on progress of Maine Law, [415](#); Dr. Frederic Lees, [423](#); prisons and work-houses emptied by operation of Maine Law, [425-7](#), [431-3](#); beneficial effects of, [426-8-9](#), [430-1-2-3-4](#); crime diminished by, [424-5-6-7-8-9](#), [430-1-4](#)

Manchester, burglary at, [150](#)

massacre, [14](#)

Manchester Courier, Nov. 22nd, 1851, article from, [225](#)

Manchester Guardian, Oct. 22nd, 1851, extract from, [203](#)

Manningtree, burglary at, [150](#)

Marine store dealers, [69](#)

Mark system, [262](#)

Marston, Mr., [146](#)

Masters and servants, [71](#)

Mayne, Sir Richard, [162](#), [324](#)

Means for repression of crime, [9](#), [161](#), [328](#) (see also 'Education,' 'Maine Law,' 'Recreation')

Metropolitan Association for Improving the Dwellings of the Industrious Classes, [302](#)

their charter, cost of, [308](#)

branch societies, [308](#)

Bristol branch, [326](#)

- Mettray, [55](#), [356](#); account of author's visit to, [119](#); conditions on which Sacrament is administered at, [472](#); cost per head, [126](#), [133](#); effect of Revolution of 1848 upon, [128](#); expulsion from, [124](#); family principle, [121](#); funerals, [122](#); gallant conduct of colons, [133](#); the institution imitated, [133](#); increasing success of, [131](#); infirmary, [122](#); mental instruction, [123](#); mortality, [131](#); officers, [121](#), [132](#); Orfrasière, [133](#); proportion reformed, [126](#), [131](#), [470](#); *recidivistes*, [125](#), [131-2](#); refuge for well-conducted colons, [125](#), [471](#); religious teaching, [124](#); results obtained, [131](#); Sisters of Charity, [123](#); training school, [121](#), [132](#)
- Military called out at Birmingham, [2](#)
- Millbanke, Sir John, [618](#)
- Milnes, Mr. R. M., [345](#)
- Minister of Justice for Belgium, [19](#)
- Mitigation in criminal code, [204](#), [614](#), [638](#)
- Model lodging houses at Bristol, [326](#)
- Modern India, [158](#)
- Molesworth, Sir William, [633](#)
- Monk, Dr., late Bishop of Gloucester and Bristol, [326](#)
- Montesinos, Colonel de, [532](#), [571](#)
on prison at Valencia, [557](#)
- Montgomery, Mr. James, [14](#)
- Moral hospitals, prisons regarded as, [105](#), [209](#), [267](#)
- Morgan, Mr. W., [265](#), [345](#)
- Morning Advertiser*, Nov. 8th, 1851, article from, [222](#)
- Morning Chronicle*, Oct. 15th, 1855, [508](#)
- Morning Post*, Oct. 25th, 1851, [212](#)
Oct. 28th, 1851, [218](#)
- Moveable iron huts for convicts, [588](#), [675](#)
- Mullens, Mr., [43](#)
- Munich Prison described by Mr. A. B. Cochrane, [544](#)
by Mr. G. Combe, [578](#)
by Rev. H. C. Townsend, [550](#)
expense of each prisoner in prison at, [567](#)
officers employed at, [568](#)
proportion of convicts reformed at, [566](#), [581](#)
questions and answers respecting, [564](#)
results obtained at, stated by Herr Obermaier, [549](#)
system pursued at, adopted elsewhere, [566](#)
- Murderous outrage at Birmingham, [146](#), [151](#)
at Frome, [189](#)
- Murray, Mr. P. J., [677](#)
- Murrietta and Co., Messrs. Christobal de, [544](#)
- National Reformatory Union, first provincial meeting of, [346](#); authorised report of, [346](#); letter from Mr. Dunne read at, [358](#), papers read at, [346](#)
- Naylor, Rev. T. B., letter from, to Captain Maconochie, [273](#)
- Needlemakers, [282](#)
- North Australia unsuitable for penal colony, [630](#)
- Northcote, Sir Stafford, [345-6](#)
- Not so Bad as They Seem*, extract from, [677](#)
- Oakley, Mr., observations on Grand Jury system, [451](#)
- Obermaier, Herr, extracts from his work on Prisons, [549](#) (*see also* 'Munich Prison')
- Observations on Charge of May, 1840, [46](#)
- O'Connor, Fergus, [14](#)
- Offences against property, [7](#)
large number of, never detected, [7](#), [42](#)
- Offenders already convicted to be liable to be called upon to show that they enjoy means of honest livelihood, [181](#) (*see also* 'Proposal,' &c., [704](#))
diminution in number of, [151](#)
(*See also* 'Juvenile Offenders.')
- Orfrasière, offshoot from Mettray, [133](#)
- Organ, Mr., [587](#), [674](#), [676](#)
- PAGE, Judge, [30](#)
- Pakington, Sir John, [344](#)
on debate on Ticket-of-leave Bill, [688](#)
- Palmerston, Lord, in debate on Ticket-of-leave Bill, [689](#)
his construction of Ticket-of-leave Act accords with the author's, [691](#)
on importance of hope in reformatory treatment, [690](#)
- Parental responsibility enforced, [338](#), [356](#)
excellent results of enforcing, at Newcastle-upon-Tyne, [358](#)
- Parkman, Dr., murder of, [20](#)
- Patronage societies in Bavaria, [569](#)
- Paulton Literary Institution, extract from address at, [364](#)
- Peace Association, [197](#)
- Pearson, Mr. Charles, [466](#), [519](#)
his plan to make prisons self-supporting, [520](#)
Mr. Chesterton upon, [520](#)
- Penal colonies, [184](#)
difficulty of founding, [629](#)
servitude, [513-6](#)
application of the term to be extended, [652](#)
defined, [475](#); Colonel Jebb's evidence respecting, [476](#); remission of, [159](#); sentences to, [477](#)

- Penal servitude men, ill effect of excluding from privilege of ticket-of-leave, 562, 659
 eligible to receive them, 535; Mr. Waddington's evidence respecting, 687; will begin to be discharged in 1857, 620
- Penal settlement, evils of, 648
- Perpetual imprisonment, 522, 624
 Mr. Chesterton on, 522; Mr. Stuart Wortley on, 523; author's evidence before Transportation Committee on, 524; Mr. Waddington upon, 525; when necessary, 616
 for the incorrigible, 465; advocated by the *Times*, 481; *Spectator*, 490; *Examiner*, 496; *Weekly Dispatch*, 502
 principle of, recognised by Government, 653, 667
- Persons pursuing crime as a calling (see 'Class who,' &c., 698)
- Petition from Liverpool magistrates, 127
- Petitions in favour of prisoners, 135, 141
- Philadelphia, penitentiary at, 248; refuge at, 448
- Phillimore, Mr., 26
- Philpotts, Mr. Thomas, 346
- Photographic portraits of criminals, 593, 678
- Photography as an Aid to the Administration of Criminal Justice*, a letter from Mr. Gardner, 594
- Phrenology, 48
- Physicians, opinion of seven, on phrenology, as applied to criminal discipline, 49
- Physiology, 49
- Police, chief-superintendents of, should be furnished with means of detecting criminals, 596
 duties of, towards ticket-of-leave holders, 660
 excellence of, at Birmingham, 9
 officers, testimony of, 177
 surveillance by, 221
 ticket-of-leave holders in Ireland required to report themselves to, 675, 678
- Police Gazette*, extract from, 611
- Political prisoners, 12
- Poor man's 'Book of Sports,' 83
- Port Arthur, convicts at, 635
- Portland, cost of convicts at, 649
- Powell, Rev. Townsend, 55, 353
- Press, vigilance of the, 154, 638
- Presumption of guilt to be met by counter-presumption of innocence, 155, 188
- 'Prevention,' letter from, 70
- Price's Candle Company, 78
- Principle of reformation has not yet been tried in England, 626
- Principles of punishment, draft report on, 522
- Prison, discharge from, period when criminals are most difficult to deal with, 647
 labour should be profitable, 249
 does not unjustly interfere with honest labour, 128, 503
 visiting, 248
 discipline, 14, 103, 258
 in Ireland described, 672; results of, 676
 object of, 657
 results of present system unsatisfactory, 656
 select committee on, 1850, 519
- Prisons, their condition formerly, 258
 Mr. Pearson's plan to make self-supporting, 520
 of Munich and Valencia, 543
 should be regarded as moral hospitals, 267
 too sumptuous, 211
 and workhouses emptied by operation of the Maine Law, 425-7, 431-3
- Prisoners' Aid Society at Birmingham, 276, 599, 604
- Prisoners' Counsel Bill, 25-8, 41
 employment of, on public works, 617, 649
 employment of, supposed to interfere with honest labour; fallacy of this opinion demonstrated, 128, 503
 how they should be treated, 286
 instances of, who are well-conducted in confinement, but outrageous when at liberty, 521
 petitions in favour of, 135, 141
 photographed to secure identification, 593
 should be permitted to earn a little money to support them after leaving prison, 179
- Prize-fighters, 95
- Proposal to call upon persons once convicted and suspected of living by crime, to show that they possess means of honest maintenance, 155, 181
 approved by 'Amicus,' 167
Edinburgh Review, 228
Liverpool Mercury, 221
Manchester Guardian, 203
Spectator, 173-6, 215
Times (partially), 230
 disapproved by *Birmingham Mercury*, 210
Examiner, 194
Manchester Courier, 225
Morning Advertiser, 222
Morning Chronicle, 207
Morning Post, 212, 218
Times, 159, 163, 170, 200

Principle adopted by Government, without safeguard of trial proposed by Author, [468](#) (see also 'Reputed Thieves')

Property, offences against, [7](#)

Prosecutions, expense of, [5](#)

Prostitutes, [74](#), [85](#), [138](#)

Public baths and wash-houses, [86](#)

houses, in Birmingham, [603](#); committee on, [380](#)

play-grounds, [81](#); readings, [83](#); works, employment of convicts on at home, [617](#), [649](#)

Punishment, [102](#), [253](#); rapidly become lighter, [463](#); now almost resolved into imprisonment with labour, [624](#); repression of crime, the true end of punishment, [622](#), [646](#)

Puritans, [82](#)

'QUARTERLY REVIEW,' December, 1855, extract from, [342](#), [4](#), [5](#)

Questions regarding prison at Munich, [564](#); at Valencia, [571](#)
sanitary state of Birmingham, [317](#)

RATE OF MORTALITY AT BIRMINGHAM, [315](#)

Rathbone, Mr. William, [87](#)

Rauhe Haus, [356](#)

Reader, Mr., [110](#)

Receivers of stolen goods, [9](#), [67](#)

Recommitments at Warwickshire Sessions, [348](#)

Recreation, [81](#), [4](#)

Redhill, [356](#)

Reformation, the object to be aimed at in treatment of criminals, [243](#); impossibility of, with a system of short imprisonments, [624](#); of all criminals impossible, [227](#); of large proportion proved possible by experience of Bavaria and Spain, [656](#); how attainable, [657](#); must be relied on for diminution of crime, [284](#); should determine length of imprisonment, [522](#); test of, [542](#), [672](#); satisfactory test of, regarded by Sir George Grey as impossible to obtain, [667](#)

Reformatory discipline, [539](#); principle has not yet been tried in England, [626](#)

Reformatory schools, [543](#); their management, [354](#); government allowance for each child at, [341](#), [345](#)

Reformatory treatment, [8](#), [103](#), [111](#), [117](#), [129](#), advocated by grand jury, [191](#); applicable alike to juvenile and adult offenders, [289](#), [337](#); importance of hope as an element in, [534](#), [585](#), [659](#), [690](#); of necessity penal in nature, [245](#)

Relation between employers and employed, [77](#)

Remission of sentences of penal servitude men, [159](#), [477](#)

Repeated convictions, [108](#)
imprisonments, [183](#)

Report of commissioners on constabulary force, [7](#)

Repression of crime, true end of punishment, [622](#), [646](#)

Reputed thieves, proposal to restrain, [155](#), [186](#), [205](#), [210](#), [212](#); considered dangerous, [165](#), [195](#), [202](#), [212](#), [224](#); impracticable, [164](#), [210](#), [213](#), [221-4](#); inoperative, [218](#); unjustifiable, [172](#); unnecessary, [166](#) (see, also, 'Proposal,' &c., p. [704](#))

Retributive principle in punishment, [182](#)

Returning juvenile offenders to their parents or employers, [118](#), [351](#), [601](#)
register of those returned at Birmingham, [351](#)

Riots in Birmingham in 1839, [1](#)

Rogers, Mr., surgeon to Birmingham Gaol, [276](#)

Romilly, Sir Samuel, [184](#); Memoirs of, [35](#)

'SALMONIA,' extract from, [280](#)

Salt forced into the mouth of a prisoner in Birmingham Gaol, [236](#)

Saltley Reformatory, [255](#)

Salvagnoli, Sig., [286](#)

Scotch prisons, [244](#)

reports on, quoted, [521](#)

Self-respect of prisoners should be cultivated, [17](#)

Sequel to Charge of July, 1839, [11](#); of October, 1845, [75](#); of March, 1847, [109](#); of October, 1848, [130](#); of April, 1850, [141](#); of October, 1850, [157](#); of October, 1851, [191](#); of October, 1853, [262](#); of March, 1854, [311](#); of September, 1854, [342](#); of January, 1855, [390](#); of October, 1855, [474](#); of October, 1856, [543](#); of December, 1856, [622](#); of March, 1857, [669](#)

Servants and masters, [71](#)

Seven bishops, trial of, [29](#)

Shaw, Mr., [325](#)

Sherwin, Rev. Ambrose, [234](#)

'Shog,' [683](#)

Shop-doors, exposing goods at, [75](#), [349](#)

Short imprisonments, evils of, [110](#), [183](#), [208](#)

render reformation impossible, [624](#)

Simons, Mr., letter from, [306](#)

Skipworth, Sir Grey, [347](#)

Smith, Dr. Southwood, [299](#), [305](#)
conversation of author with, [311](#)

Rev. Sydney, [36](#)

- Smithfield Penitentiary in Dublin described, [67](#); by Captain Crofton, [586](#); proportion reformed at, [587](#)
- Smuggling suppressed on the Sutherland estate, [331](#)
- Socialists, [114](#)
- Société de Patronage, [287](#)
- Somers, [29](#)
- Spain as It Is*, by G. A. Hoskins, [552](#)
- Spain, evil effect of depriving prisoners of hope in, [659](#)
- Spectator*, extract from, October 26th, 1850, [173](#)
November 2nd, 1850, [176](#)
October 25th, 1851, [215](#)
October 13th, 1855, [487](#)
October 20th, 1855, [516](#)
January 3rd, 1857, [638](#)
- Speech (author's) at meeting of Birmingham Discharged Prisoners' Aid Society, [599](#); at Warwick meeting, [346](#)
of Lord Stanley at meeting of Law Amendment Society, [628](#)
- Squires, May, [21](#)
- Stanley, Lord, [346](#); his speech at meeting of Law Amendment Society, [628](#)
- Statistics fallacious, [7](#)
- Stephen's *Commentaries*, [198](#)
- Stephens, Mr. (Chief of Police at Birmingham), [74](#), [148](#), [276](#), [306](#)
- St. James' Back Ragged School, [363-4](#)
- St. Leonard's, Lord, [516](#)
- Stone, Dr., [367](#)
- Stretton-on-Dunsmore, [38](#), [52](#), [63](#), [119](#), [127](#), [353](#)
described in letter from Sir J. E. Hardley Wilmot, [55](#)
- Strikes, [64](#)
- Sturge, Mr. Joseph, [265](#), [345](#)
- Suicides in Birmingham Gaol, [235](#)
- Summary convictions, [107](#)
- Summary of a plan for making landlords responsible for respectability of their tenants, [327](#)
- Surety to employer of discharged prisoner, [606](#)
- Sutherland estate, smuggling suppressed on, [331](#)
- Swimming, endeavour to learn without water, [541](#)
- Sympathy with criminals, danger of undue, [211](#), [241](#), [622](#)
- Tasmania, bushrangers in, [641](#)
convict government in, [634](#)
cost of convicts in, [618](#), [649](#)
transportation to has ceased, [618](#)
- Temperance societies, [369](#), [374](#)
- Tests of reformation, [471](#), [542](#), [563](#), [672](#)
regarded by Sir George Grey as unobtainable, [667](#)
- Testimonial to Captain Maconochie, [265](#)
- Theatres at Liverpool, [84](#)
- Thornton, Mr. Lee, extract from letter to Rev. J. W. Bellairs, from, [362](#)
- Ticket-of-leavesystem, [275](#), [462](#)
principles it embodies, [462](#); application limited to great offenders, [464](#); conditions endorsed on ticket-of-leave, [467](#), [662](#); misapprehension of, [513](#); Act explained, [651](#); not carried into effect, [469](#), [610](#), [631](#), [664](#); unpopularity of, [529](#); partly attributable to stoppage of transportation, [469](#); *Daily News* upon, [512](#); cumbrous machinery of Act, [515](#); *Spectator* upon, [516](#); St. Leonard's, Lord, upon, [516](#)
- Ticket-of-leave, [230](#)
earned by length of imprisonment, not by good conduct, [519](#)
have occasionally been revoked without fresh conviction, [662](#)
Earl Grey's favourable opinion of, [534](#) should be granted to penal servitude men, [535](#), [562](#), [659](#)
- Ticket-of-leave men confounded with convicts absolutely discharged, [536](#); and others, [610](#)
in Birmingham, [538](#), [590](#)
list of, [596](#)
Sir George Grey to author respecting, [665](#)
letter from Mr. Waddington respecting, [598](#)
in Bristol, [538](#), [591](#)
in Warwickshire, [590](#)
in England and Wales, no *data* exist for calculating proportion reformed of, [589](#)
reconvicted, return to House of Lords respecting, [664](#)
proportion of, said to be reformed, [470](#)
panic respecting, on mistaken grounds, [536](#), [610](#)
difficulty in obtaining employment, [632](#)
- Ticket-of-leave holders in Ireland required to report themselves to the police, [675](#), [678](#)
- Ticket-of-leave no proof of reclamation, [540](#), [563](#), [655](#)
Sir George Grey, upon, [540](#), [563](#), [655](#), [662](#)
holder should be held to strict responsibility, [659](#)
duties of police towards, [660](#); rule withholding licence from penal servitude men made two years after passing of the Act, [687](#)
to penal servitude men, Mr. Under-Secretary Waddington respecting, [687](#)

- Ticket-of-leave Bill, debate on, [689](#)
 Act, construed by Mr. Keating similarly to the author, [690](#)
 proposal to carry it into effect, [621](#)
 bill to amend, speech of Sir George Grey upon, [653](#)
Times, October [22](#), 1850, [159](#).—October [23](#), 1850, [163](#).—October [24](#), 1850, [170](#).—October [22](#), 1851, [200](#).—October [11](#), 1855, [478](#).—November [14](#), 1856, [230](#).—November [18](#), 1856, [604](#).—February [23](#), 1857, [678](#)
Tom Jones, [30](#)
 Total abstinence pledge, [368](#)
 Townsend, Mr. Charles, medical officer of Birmingham, [312](#); his report to Borough Inspection Committee, [312](#); extract of letter to author from, [317](#); his answers to questions proposed by author, [318](#)
 Townsend, Rev. C. H., on prison at Munich, [550](#)
 Trading Justice, [460](#)
 Trainers of thieves, [99](#)
 Transportation, [8](#), [513](#); becoming less frequent, [184](#), [615](#); more difficult, [608](#); difficulty of finding site for, [616](#); to Tasmania has ceased, [618](#); no longer open to us, [463](#); proposal to have fresh recourse to, [616](#); renewal of, held to be impossible, [639](#); rarely resorted to by any country beside England, [618](#)
 Transportation Committee, House of Commons, 1856, author's evidence before, [524](#); showing impossibility of calculating number of ticket-of-leave men reformed, [589](#); Mr. Waddington's evidence before, [525](#); Charge on resolutions of, [529](#)
 Transportation, letter on, by John Frost, [634](#)
 Transported convicts, [273](#)
Travaux Forcés, [518](#)
 Trial by jury, first introduction at Birmingham, [4](#)
 Tribunals all fallible, [187](#)
 Turner, Rev. Sidney, 342-5-6, [356](#)
 UNREFORMED convicts, evils of discharging from prison, [260-1](#), [614](#), [655](#)
 VAGRANCY, [217](#)
 Valencia, prison of, [532](#), [544](#)
 described by Mr. Hoskins, [552](#)
 described by Montesinos, [557](#)
 Valencia, officers employed at, [575](#)
 cost of each prisoner in, [574](#)
 questions, &c., regarding, [571](#)
 Vancouver's Island unsuitable for a penal colony, [630](#)
 Vidal, Rev. O. E., [149](#)
 Vigilance of the Press, [154](#), [638](#)
 Visiting magistrates, [243](#), [275](#)
 Visitors in prisons, [184](#), [247](#)
 Visits to prisoners from friends, [16](#)
 Voluntary principle in establishing reformatory institutions, [339](#)
 WADDINGTON, Mr. Under-Secretary, his evidence before Transportation Committee, [525](#)
 respecting tickets-of-leave to penal servitude men, [687](#)
 letter from, respecting ticket-of-leave men in Birmingham, [598](#)
 Wallis, Mr. S. T., on prison at Valencia, [559](#)
 Warwick, meeting at, to establish county reformatory, [346](#)
 Warwickshire Sessions, [347](#), [461](#)
 ticket-of-leave men in, [590](#)
 Webster, Professor, trial of, [20](#)
Weekly Dispatch, Oct. 14th, 1855, article from, [501](#)
 Wells, Susannah, [22](#)
 Western Australia, cost of convicts in, [618](#), [649](#)
 will not receive our worst felons, [608](#)
 Whately, Archbishop, [405](#), [473](#)
 would substitute labour for time sentences, [474](#)
 Wheatley, Mr. E. B., [346](#); fire on his estate, [366](#)
 Whitmore, Mr. Wolryche, [245](#)
 Whitty, Captain, [672](#)
 evidence of, regarding penal servitude men, [562](#)
 Wichern, Dr., [356](#)
 Wilde, Mr. Edward, [187](#)
 Wills, Mr. William, [243](#)
 Wilmot, Sir Eardley, [38](#), [348](#)
 Wilmot, Sir J. E. Eardley, letter from, describing Stretton-on-Dunsmore, [55](#)
 Witnesses, cost of, [5](#)
 paid by the public in Belgium, [19](#)
 in Massachusetts, [20](#)
 in Tuscany, [19](#)
 Workhouses and prisons emptied by operation of Maine Law, [425-7](#), [431-3](#)
 Wotton, Thomas, [665](#), [683](#)
 Wright, Mr. Thomas, [248](#), [606](#)

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